

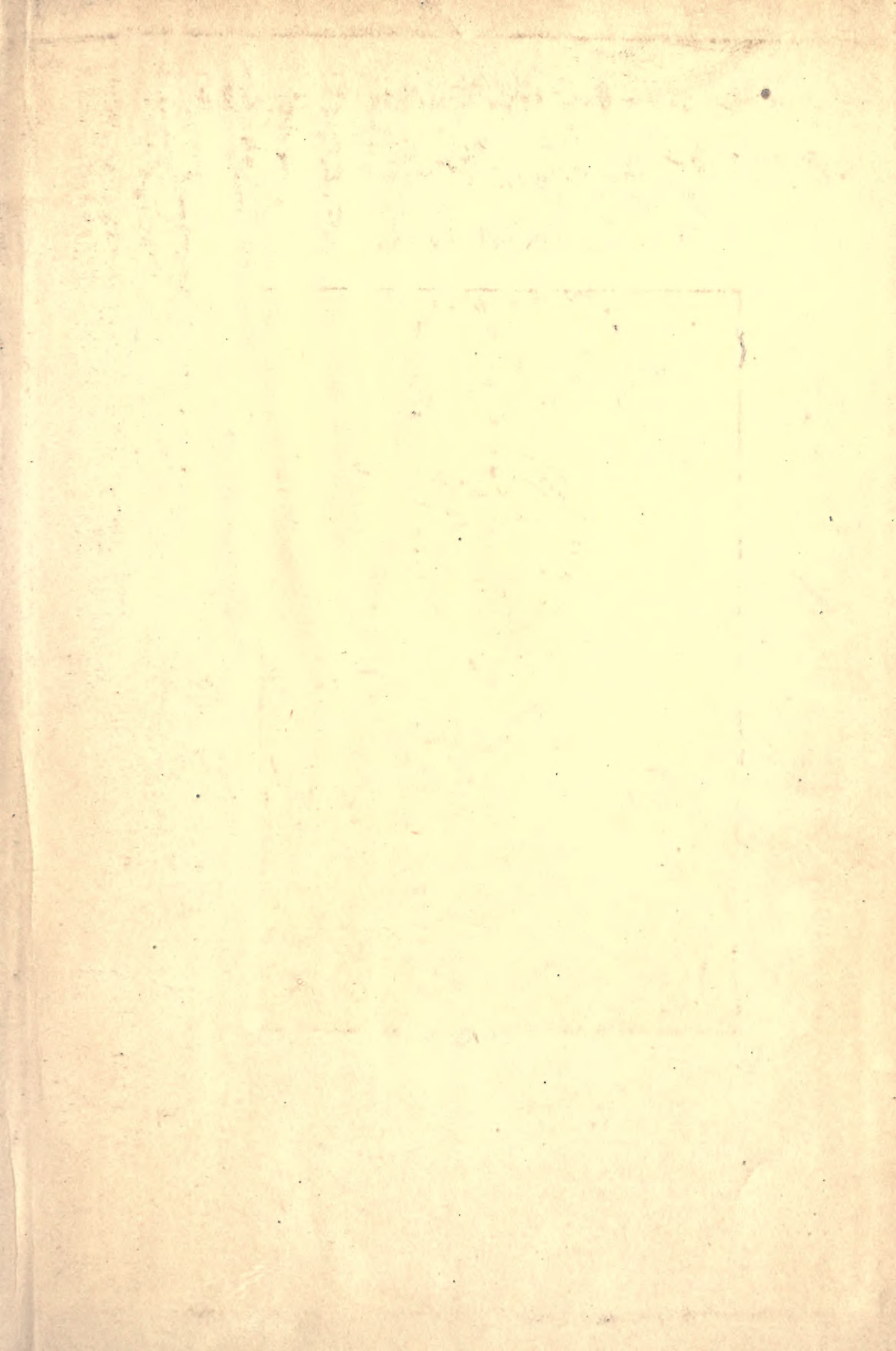
Joint Stock Company Accounts

By DAVID HOSKINS, F.C.A.



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Joint Stock Company Accounts

THIRD EDITION.

*A Text-Book for the Use of Accountants,
Bookkeepers, Business Men, and
Advanced Accountancy Students*

BY

DAVID HOSKINS, F. C. A.

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and Vice-President of the Institute of
Chartered Accountants of Ontario*

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PUBLISHED BY PERMISSION

BY

THE SHAW CORRESPONDENCE SCHOOL,
TORONTO, CANADA,
1907.

Entered according to Act of the Parliament of Canada, in the year 1907,
by the Federated Business Colleges of Ontario, Limited, at
the Department of Agriculture.

PREFACE.



“Joint Stock Company Accounts” will be found to be a larger and much more comprehensive text upon the subject of Joint Stock Companies than its predecessor, “Bookkeeping for Joint Stock Companies,” which rapidly ran through an edition of two thousand copies, since which time it has been out of print, although in constant demand. In addition to a thorough exposition of Joint Stock Company Accounts, it contains without abbreviation the new Ontario Companies Act, which comes into force July 1, 1907, and the Dominion Companies Act, with amendments up to date; these will be found extremely useful for purposes of reference and comparison. Another special feature is the chapter dealing with “Canadian Decisions in Company Law;” all of the cases cited are of recent date and are consequently of interest as well as importance.

“Joint Stock Company Accounts” is recommended by the Institute of Chartered Accountants as the text on this subject to be read by candidates for their examinations. For prospective candidates at the aforesaid examinations, and for advanced classes in all institutions in which the study of accountancy is a specialty, it is believed that this book will be found to be peculiarly well adapted, while its value to the book-keeper or company secretary can hardly be over-estimated.

DAVID HOSKINS.

TORONTO, June 15, 1907.

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CHAPTER I.

JOINT STOCK COMPANIES.

A Joint Stock Company is an organization similar to a partnership, which has been authorized to carry on business under special conditions contained in a charter issued to it under the authority of either the Dominion Parliament or the Legislature of one of the Provinces. Companies cannot be formed under the Dominion or the Provincial Joint Stock Companies' Acts for the purpose of carrying on a banking, insurance, telephone, telegraph, railroad, or loan company business; such companies must be incorporated either by a special Act of Parliament or under some of the other existing Acts.

A share in a Joint Stock Company is one of the equal parts into which the capital of the company is divided as set forth in its Charter. A person subscribing for or purchasing one or more of these shares is called a shareholder and is entitled to participate in the profits of the company. He can usually sell his shares at any time without consulting his fellow-shareholders, and has certain privileges and responsibilities which differ materially from those of a member of a partnership. The original subscribers to the stock of a company sign what is commonly known as the Subscription Book. This book, called in the Act, the Memorandum of Agreement and Stock Book, is headed with a general statement signifying that the persons, whose names are attached to it, agree to take the number of shares of the stock placed opposite their names, and to pay for the same as called upon to do so by the directors. In a company whose shares are to be placed before the public for widespread subscription, it is customary to require subscribers, other than the charter members, to fill up and sign a printed application for shares. At a meeting of the provisional directors, held for the purpose, the shares are allotted to such of the applicants as the directors consider it most desirable to have as shareholders in the company.

The affairs of a Joint Stock Company are managed by a board of not less than three directors, elected annually by the shareholders from among themselves. The directors elect from among themselves the President of the company, and have power to appoint and remove at pleasure all other officers thereof. It is illegal for directors to provide for the payment of the President or any director without the consent of the shareholders at a general meeting. Directors must not vote on any contract in which they have a personal interest. The first directors are

named in the Charter and are called Provisional Directors and have power to act until the regular directors have been elected in their stead.

The Charter or Letters Patent of Incorporation is the document which gives official recognition to a company as a body corporate, and confers upon its members the right to do business as a Joint Stock Company. Charters issued under the Dominion Companies' Act are signed by the Secretary of State and announced in the "Canada Gazette"; those issued under the Ontario Companies' Act are signed by the Provincial Secretary and announced in the "Ontario Gazette"; a similar procedure is followed in all of the other Provinces.

The aggregate amount of stock which a company is authorized by its charter to issue is known as its Authorized Capital. This consists of a certain number of shares each having a fixed par value of \$100, \$50, \$25, \$10, \$1, or any other amount which the original subscribers may have asked for in petitioning for incorporation. Shares of small amounts are seldom used except in companies of a highly speculative nature, such as those formed for mining, experimental or explorative purposes.

The Subscribed Capital, as its name implies, is that portion of the authorized capital which has been subscribed for. A company incorporated under the Dominion Act must have at least ten per cent. of its Authorized Capital subscribed and paid for before commencing its operations or incurring any liability; under the Ontario Act no definite proportion is specified as a minimum subscribed capital.

The Paid-up Capital is the aggregate amount paid in by shareholders on account of their subscriptions. Under the Ontario Act no restrictions are made regarding Paid-up Capital; under the Dominion Act 10 per cent. of the authorized capital must be paid up before commencing business.

Persons subscribing for shares in a Joint Stock Company must pay the face value of the stock in accordance with the terms of their subscription or whenever called upon to do so by the directors. Generally shares are paid for in instalments, the official request to the shareholders for the same being technically known as a Call. No shareholder can be forced to pay in more than 100 per cent. of the face value of the stock he holds unless he has subscribed for it at a premium, in which event he can be held for the agreed amount. This is one of the most important features of Joint Stock Companies as compared with partnerships. In a business carried on as a Joint Stock Company a member cannot lose more than the cost price of the stock held by him, whereas in a partnership he is liable for all he may be worth in order to satisfy the claims of the creditors. The fact that a man has but a small interest in a partnership does not lessen his liability to the creditors of the concern, whereas in a Joint Stock Company his liability is limited to paying in full

for the stock he subscribed for. Thus a man who subscribed for ten shares of stock at par and had paid in 70 per cent. thereon could only be held for the remaining 30 per cent. in the event of the winding-up of the company. A notable exception to this rule is that of shareholders in banks, who may be held liable to the extent of double the amount of the par value of the shares.

Among the many advantages to be derived from conducting a business as a Joint Stock Company instead of as a Partnership may be enumerated the following :

(a) In case the Partnership turns out to be unprofitable and becomes insolvent each partner would be personally responsible to creditors for the total liabilities of the business no matter how small an interest in the concern he might hold, whereas as a shareholder in a Joint Stock Company he could only be called upon to pay the unpaid balance of the shares held by him. Thus, as a partner, he might lose all he was worth, while as a shareholder he could only lose what he had already paid for his shares, together with the amount required to pay them up in full.

(b) It is much easier to obtain capital to carry on business on a large scale when the company is on a Joint Stock basis. Not only is the possible loss to shareholders reduced to a minimum, but, unless the stock is already fully taken up, new subscribers may be obtained at any time, thus bringing extra capital into the concern, whereas in a Partnership it would be necessary to find a person willing not only to invest the required capital, but to accept the responsibilities of a partner as well.

(c) As a partner one cannot withdraw from a firm without the consent of the other partners, except at the termination of the period mentioned in the Agreement, but as a shareholder in a Joint Stock Company one is at liberty to sell his shares at any time and to any person, provided the Calls have been fully paid up. When the Calls have not been fully paid up, the consent of the directors is necessary.

(d) The death of a partner dissolves the Partnership and necessitates a settlement with the executors of the estate in regard to the interest of the deceased, but as a shareholder his death would have no effect upon the corporate existence of the company at all; his shares would become the property of his heirs.

(e) The failure of a firm running as a Joint Stock Company does not reflect upon the financial standing or business capacity of its individual shareholders to anything like the same extent as if the business were conducted as a Partnership.

(f) In a Joint Stock Company a shareholder has personally no voice in the direction of its affairs except at meetings of shareholders, where

he has one vote for every share he holds, his controlling power thus corresponding exactly to his financial interest in the business. In a Partnership those owning only a small proportion of the net assets have powers and responsibilities practically the same as partners whose vested interests are very much greater; this in many cases has been found to be extremely undesirable.

Examination Questions.

1. Define the following :
 - (a) Joint Stock Company.
 - (b) Shareholder.
 - (c) Board of Directors.
 2. Explain clearly what is meant by the following :
 - (a) Authorized Capital.
 - (b) Subscribed Capital.
 - (c) Paid-up Capital.
 3. Enumerate briefly some of the advantages to be derived from conducting a business as a Joint Stock Company instead of as a Partnership.
 4. Compare the position of a Shareholder in a Joint Stock Company with that of a Partner in a Partnership, in case of the insolvency of the respective concerns.
-

CHAPTER II.

HOW TO SECURE INCORPORATION UNDER THE DOMINION COMPANIES' ACT.

Purposes for which Companies may be Incorporated. The Secretary of State may, by Letters Patent under his seal of office, grant a Charter to any number of persons, not less than five, who apply therefor, constituting such persons, and others who have become subscribers to the memorandum of agreement hereinafter mentioned and who thereafter become shareholders in the company thereby created, a body corporate and politic, for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends, excepting the construction and working of railways or of telegraph or telephone lines, or the business of banking and the issue of paper money, or the business of insurance, or the business of a loan company.

The Application. The applicants for such letters patent, who must be of the full age of twenty-one years, shall file in the Department of the Secretary of State an application setting forth the following particulars :—

(a) The proposed corporate name of the company, which shall not be that of any other known company incorporated or unincorporated or any name liable to be confounded therewith, or otherwise, on public grounds, objectionable. The Secretary of State may give to the company a corporate name different to that proposed by the applicants if the proposed name is objectionable.

(b) The purposes for which its incorporation is sought. The statement of objects should be clear and concise and should not embody powers which are clearly provided for by the Act;

(c) The place within Canada which is to be its chief place of business;

(d) The proposed amount of its capital stock;

(e) The number of shares and the amount of each share,

The amount of each share must not be less than one hundred dollars, except in cases where the capital stock is one hundred thousand dollars or less, when the shares may be fifty dollars and upwards.

(f) The names in full and the address and calling of each of the applicants, with special mention of the names of not more than fifteen and not less than three of their number, who are to be the first or provisional directors of the company;

(g) The amount of stock taken by each applicant, the amount, if any, paid in upon the stock of each applicant, and the manner in which the same has been paid, and is held for the company. The petition must be signed by each of the applicants in person, and in presence of a witness. If, however, this is found impracticable in any case the applicant may sign by an attorney, but the original power of attorney, or a duly authenticated or notarial copy thereof, must be produced. Each signature should be verified by an affidavit or statutory declaration made by the witness thereof.

If it is not specially stated in the purposes for which incorporation is sought that the operations of the company are to be carried on throughout the Dominion of Canada, that fact should be set out in a supplementary paragraph to be added to such purposes. The application may ask for the embodying in the Letters Patent of any provision which, under this Act, might be made by by-law of the company or by-law of the directors approved by a vote of shareholders; and such provision so embodied shall not, unless provisions to the contrary are made in the Letters Patent, be subject to repeal or alteration by by-law.

Memorandum of Agreement. The application shall be accompanied by a memorandum of agreement, in duplicate under seal, both of which may be similar to, and shall in their essential features conform to the forms on pages 7, 8 and 9.

Intending applicants may procure complete sets of application forms for Letters Patent upon application to the Honourable the Secretary of State, Ottawa.

Proof Required. Before the Letters Patent are issued, the applicants shall establish, to the satisfaction of the Secretary of State, the sufficiency of their application and memorandum of agreement and the truth and sufficiency of the facts therein set forth, by affidavits or affirmations or statutory declarations of any of the petitioners resident in Canada, as follows :—

(a) An Affidavit or Statutory Declaration establishing the sufficiency of the Petition and of the Memorandum of Agreement and Stock Book, and the truth and sufficiency of the facts therein stated, also that the proposed name of the company is not that of any other known incorporated or unincorporated company.

(b) Affidavits or Statutory Declarations verifying the signatures to the Petition and Memorandum of Agreement and Stock Book.

FORMS OF APPLICATION FOR LETTERS PATENT.

Forms of Application, Memorandum of Agreement and Affidavits.

APPLICATION FOR INCORPORATION UNDER "THE COMPANIES ACT, 1902."

To the Honourable the Secretary of State of Canada :

The application of

respectively sheweth as follows :—

The undersigned applicants are desirous of obtaining letters patent under the provisions of "The Companies Act, 1902," constituting your applicants and such others as may become shareholders of the company, thereby created a body corporate and politic under the name of

"Limited,"

or such other name as shall appear to you to be proper in the premises.

The undersigned have satisfied themselves and are assured that the proposed corporate name of the company under which incorporation is sought is not the corporate name of any other known company incorporated or unincorporated, or any name liable to be confounded therewith or otherwise on public grounds objectionable.

Your applicants are of the full age of 21 years.

The purposes for which incorporation is sought by the applicants are :

The operations of the company are to be carried on throughout the Dominion of Canada and elsewhere.

The chief place of business of the proposed company within Canada will be at , in the County of , in the Province of . The amount of the capital stock of the company is to be \$. The said stock is to be divided into shares of \$ each.

The following are the names in full and the address and calling of each of the applicants with the amount of stock taken by each applicant respectively :

| APPLICANT. | Amt. of Stock Subscribed. |
|------------|------------------------------|
| | |

The said
will be the first or provisional directors of the company.

JOINT STOCK COMPANY ACCOUNTS.

A stock book has been opened and a memorandum of agreement by the applicants under seal in accordance with the statute has been executed in duplicate—one of the duplicates being transmitted herewith.

The undersigned therefore requests that a charter may be granted constituting them and such other persons as hereafter become shareholders in the company, a body corporate and politic for the purposes above set forth.

| | |
|-------------------------|--------------------------|
| SIGNATURE OF WITNESSES. | SIGNATURE OF APPLICANTS. |
| | |

Dated at _____, this _____ day of _____ 190 .

NOTE.—If any cash has been paid in on stock or if any property is intended to be accepted on account of stock, it should be here stated.

(To be executed in duplicate; one duplicate to be transmitted with the application.)

MEMORANDUM OF AGREEMENT AND STOCK BOOK.

We the undersigned do hereby severally covenant and agree each with the other to become incorporated as a company under the provisions of The Companies Act, 1902, under the name of The _____ Company of _____ (Limited), or such other name as the Secretary of State may give to the company, with a capital of _____ dollars, divided into _____ shares of _____ dollars each.

And we do hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital stock of the said company set opposite our respective names as hereunder and hereafter written, and to become shareholders in such company to the said amounts.

In witness whereof we have signed.

| Name of Subscriber. | Seal. | Amount of Subscription. | Date and Place of Subscription. | | Name of Subscriber. | Name of Witness. |
|---------------------------|-------|-------------------------------|------------------------------------|--------|---------------------------|------------------------|
| | | | Date. | Place. | | |
| | | | | | | |

CANADA : } IN THE MATTER OF the application of
Province of } and others for incorporation under "The Com-
County of } panies Act, 1902," as
TO WIT : }

I, _____ of the City of _____, in the County of _____,
Province of _____, make oath and say :—

1. That I am one of the applicants herein.
2. That I have a knowledge of the matter, and that the allegations in the within petition contained are, to the best of my knowledge and belief, true in substance and in fact.
3. That I am informed and believe that each petitioner signing the said petition is of the full age of twenty-one years, and that his name and description have been accurately set out in the preamble hereto.
4. That the proposed corporate name of the company is not on any public grounds objectionable, and that it is not that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.
5. That I have satisfied myself and am assured that no public or private interest will be prejudicially affected by the incorporation of the company as aforesaid.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of "The Canada Evidence Act, 1893."

Declared before me at the

of _____ in the County _____ }
of _____ this _____ day }
of _____ A.D. _____ }

CANADA : } IN THE MATTER OF the application of
 Province of } and others
 County of } for incorporation under "The Companies Act, 1902,"
 To Wit : } under the name of

I, _____ of the City of _____,
 in the County of _____, make oath and say that:—

1. I was personally present and did see the within petition and memorandum of agreement and stock book duly signed and executed by _____ the parties thereto.

2. The said petition and memorandum of agreement and stock book were executed at the City of _____ aforesaid.

3. I know the said parties.

4. I am a subscribing witness to the said petition and memorandum of agreement and stock book.

Sworn before me at the City of _____

in the County of _____

this _____ day of _____

A.D. 190 .

Fees. No steps shall be taken in the Department of the Secretary of State towards the issue of any Letters Patent or supplementary Letters Patent under "The Companies Act, 1902," until after all fees therefor are duly paid.

The following is the tariff of fees payable under section 17 of the Act:—

| | |
|--|---------|
| When the proposed capital stock of the company is \$20,000 or less than \$20,000 | \$50 00 |
| When the proposed capital stock of the company is more than \$20,000 and less than \$50,000 | 150 00 |
| When the proposed capital stock of the company is \$50,000 or upwards and less than \$100,000 | 200 00 |
| When the proposed capital stock of the company is \$100,000 or upwards and less than \$150,000 | 225 00 |
| When the proposed capital stock of the company is \$150,000 or upwards and less than \$200,000 | 250 00 |
| When the proposed capital stock of the company is \$200,000 or upwards and less than \$300,000 | 300 00 |
| When the proposed capital stock of the company is \$300,000 or upwards and less than \$400,000 | 325 00 |
| When the proposed capital stock of the company is \$400,000 or upwards and less than \$500,000 | 350 00 |

| | |
|---|----------|
| When the proposed capital stock of the company is \$500,000 or upwards and less than \$600,000 | \$375 00 |
| When the proposed capital stock of the company is \$600,000 or upwards and less than \$700,000 | 400 00 |
| When the proposed capital stock of the company is \$700,000 or upwards and less than \$800,000 | 425 00 |
| When the proposed capital stock of the company is \$800,000 or upwards and less than \$900,000 | 450 00 |
| When the proposed capital stock of the company is \$900,000 or upwards and less than \$1,000,000 | 475 00 |
| When the proposed capital stock of the company is \$1,000,000.. | 500 00 |
| For every additional million dollars of capital stock or fractional part thereof | 100 00 |
| For supplementary Letters Patent to increase the capital stock of a company, the fee to be according to the above tariff, but on the increase only. | |
| For supplementary Letters Patent for any purpose other than an increase of capital a fee of | 100 00 |

All fees must be paid in cash or by an accepted cheque made payable to the order of the Honourable the Secretary of State, and should be transmitted to him by registered letter.

Notice of the Granting of Letters Patent. Notice of the granting of Letters Patent shall be forthwith given by the Secretary of State by two insertions in the *Canada Gazette*, and thereupon, from the date of the Letters Patent, the persons therein named, and such persons as have become subscribers to the Memorandum of Agreement or who thereafter become shareholders in the company, and their successors, shall be a body corporate and politic, by the name mentioned in the Letters Patent; and a copy of every such notice shall forthwith be, by the company to which such notice relates, inserted on four separate occasions in at least one newspaper in the county, city or place where the head office or chief agency is established. If the company fails or neglects to cause such copy to be so inserted, it is guilty of an offence and liable on summary conviction before two justices of the peace to a penalty not exceeding twenty dollars for each day that such failure or neglect continues.

Commencement of Business. The company shall not commence its operations or incur any liability before ten per centum of its authorized capital has been subscribed and paid for. Every director who expressly or impliedly authorizes such operations being so commenced or liabilities being so incurred shall be jointly and severally liable with the company for the payment of such liabilities.

Examination Questions.

5. Write brief notes explanatory of
 - (a) Application or Petition for Letters Patent;
 - (b) Memorandum of Agreement;
 - (c) Charter of Incorporation.
 6. What fees are payable to secure incorporation under the Dominion Companies Act?
 7. What are the requirements of the Dominion Act in regard to notice of the granting of Letters Patent?
 8. When may a company incorporated under the Dominion Act commence its business operations?
 9. Write a summary of the various steps to be taken to secure incorporation under the Dominion Act.
-

CHAPTER III.

HOW TO SECURE INCORPORATION UNDER THE ONTARIO COMPANIES' ACT.

Companies that may be Incorporated. The Lieutenant-Governor in Council may, by Letters Patent, grant a Charter to any number of persons, not less than five, who petition therefor, creating and constituting such persons and any others who may have become subscribers to the Memorandum of Agreement, a body corporate and politic for any of the purposes or objects to which the legislative authority of the Legislature of Ontario extends, except the construction and working of railways within the Province of Ontario, the business of insurance and the business of a loan corporation within the meaning of The Loan Corporations Act.

General Requirements. (1) There must be at least five petitioners for the Letters Patent, who must be subscribers for stock of the company.

(2) There must be a formal petition, duly executed, with, at least, two signatures on the page containing the prayer.

(3) There must be a memorandum of agreement and stock book duly executed, in duplicate, with, at least, two signatures on the page or sheet containing the undertaking. Stock books made up of two sheets of paper, the one setting forth the undertaking by itself, and the other carrying all the signatures by themselves will not be accepted.

(4) Special conditions regarding preference stock or otherwise, if any, intended to have a bearing on the stock of the company, or the manner in which it, or any portion of it, shall or may, be subscribed for, must be inserted in the Petition and in the Memorandum of Agreement and stock book as material parts thereof.

(5) The proper fees must accompany petition and memorandum, all of which should be sent to the Honourable the Provincial Secretary, Parliament Buildings, Toronto.

The Petition. The petition, which may be put in at any time, without Gazette notice, must state:—

(a) The name, residence, and occupation of each applicant in full, else it will be returned for completion. The word "clerk" must not be used except to describe a clerk in holy orders, the Department of the

Honourable the Attorney-General having ruled that the word may be used for this purpose only.

(b) The proposed corporate name of the company. Evidence must also be filed showing that the corporate name of the company is not on any public ground objectionable and that it is not that of any known company incorporated or unincorporated or of any partnership or individual or any name under which any known business is carried on, or so nearly resembling the same as to deceive. When the proposed corporate name includes such words as "Canada," "Dominion," "National," "Imperial," evidence should be produced that such name is not objected to by the Secretary of State. A letter or telegram from the Secretary of State is sufficient for this purpose.

(c) The object of the company briefly expressed in general terms, as for example: "To manufacture and sell glassware." Incidental powers must be left to the Act.

(d) The place in Ontario where the head office of the company is to be situated and where its principal books of account and its corporation records are to be kept, and to which all communications and notices may be addressed.

(e) The capital of the company, divided into shares.

(f) The names of the provisional directors of the company, who must be at least three in number, and who must be stockholders, and

(g) The amount of stock for which each applicant has subscribed in the memorandum of agreement and stock book.

(h) The petition must further show:

That no public or private interest will be prejudicially affected by the grant of incorporation, if such be the fact.

(i) If the applicants desire the insertion in the Letters Patent, as provided by the Companies Act, of special clauses, they must be set out in the petition.

(j) Signatures should be the ordinary business signatures of the applicants, and should be witnessed and proved by persons who are not petitioners, or directly interested in the formation of the company.

(k) Signatures must be verified by statutory declaration, or by affidavit.

(l) Signatures by attorney must be made under a specific, not a general, power, duly executed.

The Memorandum of Agreement and Stock Book. The memorandum of agreement and stock book, as per the following statutory form, must

be *in duplicate*, and must contain all special conditions regarding preference stock or otherwise, if any, intended to have a bearing upon the stock of the company.

WE, THE UNDERSIGNED, do hereby severally COVENANT and AGREE each with the other to become incorporated as a Company under the provisions of *The Ontario Companies Act* under the name of, LIMITED, or such other name as the Lieutenant-Governor in Council may give to the Company, with a capital of dollars, divided into shares of dollars each.

AND WE DO HEREBY severally, and not one for the other, SUBSCRIBE for and AGREE to take the respective amounts of the capital stock of the said Company, set opposite our respective names as hereunder and hereafter written, and to become shareholders in such Company to the said amounts.* IN WITNESS whereof we have signed.

| Signatures of Subscribers. | Seals. | Amounts of Sub- scription. | Dates and Places of Subscription. | | Residence of Subscribers. | Signatures of Witnesses. |
|--|--------|----------------------------------|--------------------------------------|---------|---------------------------------|--------------------------------|
| | | | Dates. | Places. | | |
| † At least TWO SIG- NATURES must appear on the page or leaf containing the whole, or the latter portion of the agreement to take stock. | | | | | | |

† If the subscriptions for stock are to be subject to any conditions, such, for instance, as usually attend upon the creation and holding of Preference Stock, or restrictions regarding the transfer of shares, the conditions should be set out here. † If a signature is by Power of Attorney, the Power must be specific, both as to purpose and as to the amount to be subscribed by the attorney, and must be filed with that duplicate Original Stock-Book which is to be retained by the Provincial Secretary. ‡ Independent witnesses must, by affidavit, prove each signature (in the form in which it is made) in both of the duplicates.

§ Both of the duplicate-originals must be produced with the application.

Fees for Letters Patent. 1. No application is considered in advance of the payment of the fee.

2. No cheque will be accepted unless it is *marked*.

3. Cash *not registered* is at the risk of the sender.

4. Post office orders, postal notes, cheques and drafts should be payable to the order of the *Provincial Treasurer*.

5. The following fees are subject to alteration without notice :

When the proposed capital of the applicant company is \$40,000 or less, the fee is \$100.

When it is more than \$40,000, but does not exceed \$100,000, the fee is \$100 and \$1 for every \$1,000 or fractional part thereof in excess of \$40,000.

When it is over \$100,000, but does not exceed \$1,000,000, the fee is \$160 and \$2.50 for every \$10,000 or fractional part thereof in excess of \$100,000.

When it is \$1,000,000, the fee is \$385 and \$2.50 for every \$10,000 or fractional part thereof in excess of \$1,000,000.

When the charter is for a cheese or butter company only, the fee may be \$10, if the applicants are farmers.

When the charter is for an educational institution not carried on for the purpose or object of gain, the fee may be \$10.

When the charter is for a cemetery company which is not to be carried on for gain, or which shall undertake to distribute in the improvement of its property any gain derived by the company, the fee may be \$10.

When the charter is for an athletic club, composed of amateurs, having for its object the encouragement and promotion of lawful games and exercises, and such club is not to be carried on for gain, or shall undertake to distribute in the improvement of its property and facilities as such club any gain derived by the club, the fee may be \$50.

Blank Forms. Blank forms of Petition, Memorandum of Agreement and affidavits for use in the incorporation of companies only, may be obtained upon application to the Provincial Secretary's Department, Parliament Buildings, Toronto.

While it would be arbitrary and inconvenient to refuse applications for Letters Patent prepared on paper other than that supplied by the Department, applicants are requested to use the forms supplied, in preparing such applications.

All communications should be addressed to the Honourable the Provincial Secretary, Parliament Buildings, Toronto, Ont.

Notice of Incorporation. When the Letters Patent are granted notice thereof is given by the Provincial Secretary in the Ontario Gazette and the document itself is forwarded to the applicants or their solicitor.

Examination Questions.

10. Summarize the requirements to obtain a Charter of Incorporation under the Ontario Companies Act.

11. Certain restrictions are laid down regarding the proposed name of a company to be incorporated under the Ontario Act. What are those restrictions?

12. Distinguish between the Ontario and Dominion Company Acts regarding the notice of incorporation.

13. What must be stated in a petition for incorporation under the Ontario Companies Act?

CHAPTER IV.

PROCEDURE AFTER INCORPORATION.

The Provisional Directors. In the Charter of Incorporation the names are stated of those persons who are to act as provisional directors until after the first general meeting of the company. These persons have the same power as regularly-elected directors in respect to the management of the company, but are expected to call the shareholders together in general meeting at the earliest convenient date, so that the organization of the company may be completed. Under the Ontario Act the first general meeting of the shareholders must be called within two months of the date of incorporation.

Procedure at the First General Meeting of Shareholders. The meeting having been duly called by the provisional directors as required by the statutes, the procedure would be as follows:—

- (1) Elect chairman of meeting.
- (2) Elect secretary of meeting.
- (3) The secretary reads the list of subscribers and number of shares of stock subscribed for. Each person present answers for himself or for the persons whose proxies he may hold, handing the latter to the secretary, who then announces the total number of shareholders present in person or by proxy.
- (4) The Letters Patent incorporating the company are then either read by the secretary or passed around to the different shareholders for inspection.
- (5) Nominations of directors are then received, after which the requisite number of directors are elected by ballot, each shareholder being entitled to cast one vote for each share he holds and to vote for as many directors on the one ballot as may be required to be elected.
- (6) A resolution is generally passed authorizing the directors to carry into effect the preliminary agreement signed by the original subscribers.
- (7) The shareholders' meeting then usually adjourns for a limited time to allow the directors to meet and elect the officers of the company.
- (8) After the shareholders' meeting has been resumed the secretary reports to the shareholders the names of the officers elected.
- (9) The by-laws made and passed by the directors are then submitted to the shareholders for their approval.

(10) An auditor or auditors are usually elected at this meeting by the open vote of the shareholders.

(11) The meeting then usually adjourns.

Procedure at First Meeting of Directors. It is customary after the election of directors, as described in the foregoing paragraphs, for the shareholders to adjourn for a short time to allow the directors to meet for the purpose of electing their officers and doing such other business as may be considered necessary. The procedure is generally as follows:—

(1) A Chairman and Secretary for the meeting are elected in the usual way.

(2) The secretary reads a list of directors elected at the shareholders' meeting, and if a quorum is present the minutes of the last meeting of the provisional directors are then read and confirmed.

(3) The permanent officers of the company are now elected. The Act requires that the president shall be elected by a formal vote of the directors, which is accordingly done; the other officers are usually elected in the same manner, but not necessarily so. Unless there is a good reason, however, for not doing so, it is customary to elect the President, the Vice-President, Secretary and Treasurer by an open vote of the Directors.

(4) Resolutions should then be passed regarding the adoption of By-laws, form of Seal, form of Certificate, the selection of a Bank, the payment of Calls, and other matters relating to the business of the Company which have to come before the Directors.

(5) The meeting then adjourns until the next regular meeting of the Directors; it is customary for the Directors to immediately report to the Shareholders, who have temporarily adjourned as previously explained.

Specimen of By-Laws. The following By-laws are given for the purpose of showing such points in company affairs as are usually regulated in this way. By-laws will, of course, differ very much according to the nature of the business for which they are framed. They are first passed by the Directors and are subsequently passed at a general meeting of the Shareholders.

By-Laws of the Murray-Smith Lumber Company, Limited. Passed at a meeting of Shareholders held at the head office of the Company, 27 Church street, Toronto, on Tuesday, September 25, 1906.

MEETINGS.

(1) The annual meeting of the shareholders shall be held at the head office of the Company on the first Monday of October in each year, at the

hour of twelve o'clock, noon, for the purpose of receiving the report of the Directors for the past year, to elect Directors for the ensuing year, and for all other general purposes relating to the management of the Company.

(2) General meetings of shareholders may be called at any time by the Directors, whenever they may deem the same necessary, and it shall be incumbent upon the President to call such a meeting of the shareholders whenever he receives a written request to do so signed by holders of not less than one-third of the subscribed stock of the Company, for the transaction of any business specified in such written requisition and notice calling the meeting.

(3) Notification of the time and place for holding the annual or a general meeting of the Company must be given to each shareholder at least ten days before date of such meeting.

(4) The Directors shall meet as often as the business of the Company may require, and shall be called together by the President.

(5) At all meetings of shareholders, each shareholder shall be entitled to as many votes as he owns shares in the Company, and may vote either in person or by proxy, duly appointed in writing. All questions coming up at such meetings shall be decided by a majority of such votes.

DIRECTORS.

(6) The affairs of the Company shall be managed by a Board of five Directors, of whom three shall form a quorum.

(7) The President and Vice-President of the Company shall be chosen by the Directors from among themselves at the first board meeting after the annual meeting.

(8) The President shall, if present, preside at the meetings of the Company, call meetings of the Board of Directors and Shareholders when necessary, and advise with and render such assistance to the Managing Director as shall be in his power. Questions arising at any meeting of the Board of Directors shall be decided by a majority of votes, each Director present in person being entitled to one vote. In case of an equality of votes the Chairman shall have a casting vote in addition to his own vote. In the absence of the President, the Vice-President shall act in his stead.

(9) The Secretary shall keep a record of the proceedings of all meetings of the Board of Directors and of the Shareholders of the Company, and shall be the custodian of the seal and books of the Company.

(10) Any Shareholder not in arrears for payments for calls upon his stock, and who owns in his own right not less than three shares, may be elected a Director.

(11) The Board of Directors shall from time to time determine the salary or wages to be paid the officers of the Company.

(12) The Company shall have a corporate seal of such design as the Board may determine, which seal shall be in charge of the Secretary, and whenever used shall be authenticated by the signatures of the President and Secretary.

STOCK.

(13) Shareholders shall not, without the consent of the Board of Directors, transfer their shares to any person not now a member of the Company, and all transfers whatever, shall be recorded in a book provided for that purpose, and signed by the transferor and transferee, whose signatures must be duly witnessed.

ACCOUNTS.

(14) At the annual meeting in each year, the Directors shall lay before the Company a statement of the income and expenditure for the last year, together with a balance sheet, showing the assets and liabilities of the Company arranged under their proper headings.

AUDITORS.

(15) One or more auditors, who must be Chartered Accountants, shall be appointed annually by the shareholders, at the general meeting, whose duty it shall be to examine and audit the books, vouchers and accounts of the Company, and all documents having reference to the Company's business. They shall also examine and verify the financial statements to be presented at the annual general meeting of the Company.

BANK ACCOUNT.

(16) A bank account shall be kept in the name of the Company at the Canadian Bank of Commerce, Toronto.

(17) All cheques shall be signed by any two of the following three, namely: the President, Vice-President and Secretary-Treasurer.

(18) The Directors are hereby empowered to, arrange for advances from the bank by way of discount or otherwise and to give such security as may be deemed reasonable and in the interests of the Company.

CHANGING BY-LAWS.

These By-laws may be repealed, amended and re-enacted from time to time, but such change must be confirmed at a general meeting duly

called for that purpose, otherwise they shall have force only until the next annual meeting of the Company, and if not confirmed thereat shall from that time be null and void.

Minutes. The Minute-Book is kept by the Secretary of the Company for the purpose of recording the proceedings of meetings of either the Board of Directors or of the Shareholders. The by-laws of the Company should be written in this book and the record of each meeting, after being signed by the Secretary, should be verified by the signature of the President or officer who presided thereat. In order that a correct record may be made, each motion should be written out by the mover and the result of the vote marked thereon by the Secretary and verified by the initials of the Chairman. The Minutes of each meeting are always read immediately after the opening of the following meeting and a vote taken as to their accuracy; if confirmed, they are signed by the President. Separate Minute Books should be kept for meetings of the Directors and Shareholders respectively. The auditor of a company should carefully inspect the Minute Books and take short extracts therefrom of all resolutions or proceedings which affect the accounts so that he may ascertain that the directions of the Shareholders or the Directors have been duly observed. The Directors' Minute Book is open only to the Directors, the Secretary and the auditor, but the Shareholders' Minute Book should be accessible to any Shareholder.

Specimen of Shareholders' Minutes. The following may be taken as a specimen of the Minutes of a Company meeting:—

MINUTES

of the second Annual Meeting of the Shareholders of the Toronto Bread Company, Limited, held at the head office of the Company, 684 Yonge street, Toronto, on Thursday, Sept. 20, 1906, at 2 p.m.

The president took the chair and called the meeting to order, stating that 386 shares out of a total of 400 were represented personally or by proxy.

The Secretary then read the notice convening the meeting, after which the minutes of the last annual meeting were read and confirmed.

The report of the Board of Directors of the Company and the Financial Statement for the year were then presented and on motion of Mr. R. Scott, seconded by Mr. T. Wilson, received and adopted.

After nomination, ballots were taken for the election of five directors of the Company for the ensuing year, the following being elected: Messrs. Wm. Brown, Thos. White, Samuel Green, Wm. Black, and Thos. Gray.

On motion of Mr. T. White, seconded by Mr. Wm. Black, Messrs. Hoskins and Westervelt, Chartered Accountants, were appointed auditors of the Company's books, etc., for the ensuing year at a fee of \$200 per annum.

The meeting then adjourned.

SAMUEL GREEN,
Secretary.

Read and confirmed at the third Annual Meeting of the shareholders held Sept. 19, 1907.

WM. BROWN,
President.

Application for and Allotment of Shares. It has already been explained that the applicants for the Letters Patent incorporating a Company subscribe for their original shares by signing the Memorandum of Agreement, commonly called the Subscription Book. Subsequent subscribers to the stock of the Company are usually required to complete and sign a printed form in which they agree to take at a fixed price a certain number of shares, or such less number as the directors of the Company may see fit to allot. As an application for shares is really just an offer to take the shares applied for it may be withdrawn any time before allotment. Hence the importance of promptitude and regularity on the part of the directors in this respect. Not only must the shares be actually allotted, but notification of allotment should be sent to the applicant. It is not necessary to formally allot the shares signed for by the original incorporators on the Memorandum of Agreement which accompanied the petition for incorporation. Quite frequently applications are received for a much larger number of shares in the aggregate than the company intends to issue; in such cases letters of regret should be sent to those whose applications could not be accepted.

APPLICATION FORM.

THE TORONTO BREAD CO., LIMITED.

Under the Ontario Companies Act.

Capital, \$1,350,000,

Divided into 13,500 shares of \$100 each, as follows:

| | |
|------------------------|-----------|
| Preference stock | \$600,000 |
| Ordinary stock | 750,000 |

The undersigned hereby subscribes for and agrees to take ...*Fifty*... Shares of Preference Stock of The Toronto Bread Co., Limited, or such less number as the Board of Directors of the said Company may allot under the subscription, and the undersigned agrees to pay the said Company in accordance with the terms of the Prospectus, One Hundred Dollars per share on such shares as may be so allotted.

Dated at ...*Seaforth*... the ...*10th*... day of ...*May*,... 1907.
 No. of shares,...*50*... Signature (in full).....*Thomas Williams*.....
 Amount, \$....*5,000*... Address (in full)*Seaforth, Ont.*.....

NOTICE OF ALLOTMENT.

Thos. Williams, Esq., Toronto, Ont., May 15, 1907.
 Seaforth, Ont.

Dear Sir,—

We beg to inform you that, in pursuance of your application, the directors of The Toronto Bread Co., Limited, have allotted to you Fifty Preference Shares of One Hundred Dollars each in the Capital Stock of the Company.

Yours truly,

H. HAMILTON,

LETTER OF REGRET.

Secretary.

Thos. Williams, Esq., Toronto, Ont., May 15, 1907.
 Seaforth, Ont.

Dear Sir,—

We regret to inform you that owing to the issue being largely over-subscribed the directors are unable to allot you shares in the Stock of The Toronto Bread Co., Limited, as requested in your application of the 10th inst. We enclose herewith cheque for \$500 in full of deposit made by you with aforesaid application.

Yours truly,

H. HAMILTON,

Examination Questions.

Secretary.

14. What is meant by the Provisional Directors of a company, and for how long can they act?

15. Explain clearly the procedure at the First General Meeting of the Shareholders of a Company.

16. What is the Procedure at the First Meeting of the elected Directors of a Company?

17. Mention the chief matters dealt with in the By-laws of a Company and explain how such By-laws are passed.

18. Explain clearly the use of the Minute Book of a Company.

19. Draw up an application form signed by William Webster for fifteen shares of stock in the Toronto Woodenware Co., Limited, which has been incorporated under the Ontario Companies' Act with an authorized capital of \$100,000 divided into 1,000 shares of \$100 each.

20. Write a Notice of Allotment of above signed by yourself as Secretary.

21. Write a Letter of Regret notifying the aforesaid William Webster that his application has been declined.

CHAPTER V.

COMPANY BOOKS AND STATEMENTS.

Company Bookkeeping. The books and accounts relating to a Joint Stock Company are to some extent regulated by the Act under which it has been incorporated. The Dominion Act and the various provincial Acts are substantially the same in this respect. Briefly stated, the actual bookkeeping of a Joint Stock Company differs from that of a Partnership as follows :—

- (a) In the entries relating to the Capital of the Company;
- (b) In the entries relating to the Distribution of Profits;
- (c) Special Records regarding Shareholders, Directors, etc., are called for by the various Company Acts.

Law Governing Books of Record. Section 113 of the Ontario Companies Act, referring to the Books of Record or Statistical Books, reads as follows :—

“The company shall cause the secretary or some other officer especially charged with that duty, to keep a book or books wherein shall be kept recorded :—

- (a) A copy of the Letters Patent incorporating the company and of any supplementary Letters Patent issued to the company; and if incorporated by special Act, the chapter and year of such Act;
- (b) The names, alphabetically arranged, of all persons who are or have been shareholders in the company;
- (c) The post office address and calling of every such person while such shareholder;
- (d) The number of shares of stock held by each shareholder;
- (e) The amount paid in and remaining unpaid respectively, on the stock of each shareholder;
- (f) The date and other particulars of all transfers of stock in their order; and
- (g) The names, post office addresses, and callings of all persons who are or have been directors of the company; with the several dates at which each person became or ceased to be such director.”

Right to Examine Books. Section 117 of the same Act, referring to the Books of Record, says :—

"Such books shall during reasonable business hours of every day, except Sundays and holidays, be kept open for the inspection of shareholders and creditors of the company and their personal representatives or agents at the head office, and every such shareholder, creditor, agent, or representative may make extracts therefrom."

Books of Account. Section 120 of the Ontario Act reads as follows :

"The directors shall cause proper books of account to be kept containing full and true statements :

"(a) Of the company's financial and trading transactions ;

"(b) Of the assets of the company ;

"(c) Of the sums of money received and expended by the company, and the matters in respect of which such receipt or expenditure takes place, and

"(d) Of the credits and liabilities of the company ; and also a book or books containing minutes of all the proceedings and votes of the company, or of the board of directors, respectively, and the by-laws of the company, duly authenticated, and such minutes shall be verified by the signature of the president or other presiding officer of the company."

Annual Financial Statement. This matter is dealt with in section 36 of the Ontario Act as follows :—

"At each annual meeting, the directors shall lay before the company,

"(a) A balance sheet made up to a date not more than three months before such annual meeting ;

"(b) A statement of income and expenditure for the financial period ending upon the date of such balance sheet ;

"(c) The report of the auditor or auditors ;

"(d) Such further information respecting the company's financial position as the Letters Patent or the by-laws of the company may require."

Annual Summary of Affairs. Section 131 of this Act requires every Joint Stock Company doing business in the Province of Ontario to make out annually a summary in duplicate of its affairs on printed schedules provided by the Government. These forms call for detailed information respecting the shares and shareholders of the company, its directors, etc., as on the 31st day of December, and must be made out on or before the 1st day of February of the following year ; one copy must be posted up in a conspicuous position in the head office of the company, on or before the 2nd day of February, and the other must be sent by registered letter to the Provincial Secretary, on or before the 8th day of February. Companies not complying with the provisions of this section incur a penalty of \$20 for every day default continues.

Books used by Joint Stock Companies. To meet the requirements of the Act in a way that will best suit the needs of the business, the following books are usually kept by Joint Stock Companies in addition to those used by other commercial concerns:—

1. The Memorandum of Agreement and Stock Book.
2. The Application and Allotment Book.
3. The Instalment Book.
4. The Instalment Receipt Book.
5. The Stock Certificate Book.
6. The Transfer Book.
7. The Register of Transfers.
8. The Share Ledger.
9. The Dividend Book.
10. The Register of Directors.
11. The Minute Book.

The above are not necessarily all separate books; some of them are almost invariably bound together. Explanations and illustrations regarding the use of each will be found in the pages which follow.

Memorandum of Agreement and Stock Book. This book, the statutory form of which has already been shown on page 15, contains the subscriptions of the incorporators of the Company; it must be made out in duplicate and must contain all special conditions regarding Preference Stock or otherwise intended to have a bearing on the stock of the Company. Both copies of the book must be forwarded to the office of the Provincial Secretary, along with the Petition and necessary Affidavits in making application for Letters Patent. One copy is kept there on file and the other is returned to the Company. The form is given on page 28 with subscriptions entered.

Application and Allotment Book. We have already referred to the practice of sending out blank application forms to persons who are likely to invest in the shares of the newly-organized company. The purpose of the Application and Allotment Book is to keep a systematic record of the applications received and the shares subsequently allotted thereon. The application forms are numbered consecutively as received, and entered upon separate sheets corresponding to the initial letters of the surnames of the applicants. If the list is comparatively small, one sheet may prove sufficient. The first part of each sheet consists of special columns for the names, occupations and addresses of the applicants, together with the number of shares applied for and deposits received on account of same. This information is placed before the directors, as soon as the subscription list closes, for the purpose of allotting the shares. Letters of Allotment

FORM OF MEMORANDUM OF AGREEMENT AND STOCK BOOK.

We, the Undersigned, do hereby severally Covenant and Agree each with the other to become incorporated as a Company under the provisions of the Ontario Companies Act, under the name of the Toronto Yeast Company, Limited, or such other name as the Lieutenant-Governor in Council may give to the Company, with a capital of One Hundred Thousand Dollars, divided into One Thousand Shares of One Hundred Dollars each.

And We Do Hereby severally, and not one for the other Subscribe for and Agree to take the respective amounts of the capital stock of the said Company set opposite our respective names as hereunder and hereafter written, and to become shareholders in such Company to the said amounts. In Witness Whereof, we have signed.

| Name of Subscribers. | Seal. | Amount of Subscription. | Date and Place of Subscription. | | Residence of Subscriber. | Name of Witness. |
|----------------------|-------|-------------------------|---------------------------------|---------|----------------------------|------------------|
| | | | Date. | Place. | | |
| Alexander Holmes | O | \$9000 | Feb. 6, 1907 | Toronto | 58 Shaw St., Toronto | W. T. King |
| James Wilson | O | 8000 | " 7, 1907 | Toronto | 132 Jarvis St., Toronto | W. T. King |
| Walter Scott | O | 6000 | " 7, 1907 | Toronto | 84 Carlton St., Toronto | W. T. King |
| Thomas Murray | O | 6000 | " 7, 1907 | Toronto | 96 College St., Toronto | W. T. King |
| Donald Hamilton | O | 5000 | " 8, 1907 | Toronto | 98 St. George St., Toronto | W. T. King |

are sent to those whose applications have been accepted in part or in full, and Letters of Regret are mailed at the same time to those whose subscriptions have been refused.

In our illustration (page 30) we have assumed that the Toronto Yeast Company, Limited, has placed upon the market for open subscription 405 shares of its stock, par value \$100 each, a deposit of 10 per cent. to be made with the application and the balance to be paid on allotment. The Application and Allotment Book shows the directors that 455 shares have been subscribed for, which is 50 more than they intend to issue. After carefully considering the applications they decide to reject the applications of Bailey and Cook and allot the others in full. Letters of Allotment should be immediately sent to the latter, informing them of the number of shares allotted and the balance still due upon them; the other two should receive Letters of Regret containing cheques for the amount received with their applications. At the same time that portion of the Application and Allotment Book dealing specially with allotments would be completed.

The Share Ledger is usually written up from this book immediately after the date fixed for the payment of the balances due upon allotment.

Instalment Book. This book is for the purpose of entering up a list of the shareholders and showing the amount payable by each when calls are made upon the stock. Sometimes instead of using a separate book the Application and Allotment Book is ruled with additional columns for each Call. As stock does not usually change hands until fully paid up the Instalment Book may be prepared with special columns for the different calls, thus doing away with the necessity of writing the names more than once. Interest should be charged on all instalments not paid on or before the due date of same; this, however, is frequently neglected. In the accompanying illustration a column has been provided for this purpose.

Instalment Receipt Book. The receipts issued to shareholders when they pay their Calls are known as Instalment Receipts or Scrip. The blanks are bound together and consecutively numbered like bank cheques. The shareholder signs an acknowledgment on the stub of the receipts that he has received Scrip for the amount stated thereon. These Receipts are exchanged for Stock Certificates as soon as the shares have been fully paid up.

Stock Certificate Book. This book is very similar in form to the Instalment Receipt Book and consists of blank stock certificates with the corresponding stubs. As soon as all the calls on the stock have been paid in, Stock Certificates are issued in exchange for the instalment Scrip

Application and Allotment Book.

| No. of Application. | Date of Application. | Name of Applicant. | Occupation. | Address. | No. of Shares Applied For. | Deposit Paid on Application. | Cash Book Folio. | No. of Shares Allotted. | Subscription Price per Share. | Total Value of Shares Allotted. | Balance Due on Allotment. | Date of Cash Receipt or Payment. | Cash Received in Payment of Allotment Money. | Cash Book Folio. | Cash Returned to Applicants Declined. | Share Ledger Folio. | No. of Share Certificate. |
|---------------------|----------------------|----------------------|-------------|----------------------------|----------------------------|------------------------------|------------------|-------------------------|-------------------------------|---------------------------------|---------------------------|----------------------------------|--|------------------|---------------------------------------|---------------------|---------------------------|
| 5 | Mar. | 8, '07 Allan, Samuel | Merchant | 84 Church St., Toronto | 200 | \$2000 | 6 | 200 | \$100 | \$20000 | \$18000 | Mar. | 14, '07 | \$18000 | 16 | 1 | 1 |
| 4 | " | 8, '07 Aikens, Thos. | Manager | 92 Yonge St., Toronto | 50 | 500 | 6 | 50 | 100 | 5000 | 4500 | " | 14, '07 | 4500 | 16 | 2 | 2 |
| 3 | " | 6, '07 Bailey, Wm. | Accountant | 64 Scott St., Toronto | 40 | 400 | 4 | | | | | " | 12, '07 | | 14 | 400 | |
| 2 | " | 4, '07 Brown, James | Lawyer | 86 Bay St., Toronto | 75 | 750 | 2 | 75 | 100 | 7500 | 6750 | " | 14, '07 | 6750 | 16 | 3 | 3 |
| 6 | " | 9, '07 Cook, David | Grocer | 312 Spadina Ave., Toronto | 10 | 100 | 8 | | | | | " | 12, '07 | | 14 | 100 | |
| 7 | " | 10, '07 Cross, Alex. | Grocer | 162 Bathurst St., Toronto | 10 | 100 | 10 | 10 | 100 | 1000 | 900 | " | 15, '07 | 900 | 18 | 4 | 4 |
| 1 | " | 3, '07 Darwin, Chas. | Traveller | 68 Dunn Ave., Toronto | 20 | 200 | 2 | 20 | 100 | 2000 | 1800 | " | 16, '07 | 1800 | 18 | 5 | 5 |
| 8 | " | 11, '07 Dick, John | Manufact'r | 82 St. George St., Toronto | 50 | 500 | 10 | 50 | 100 | 5000 | 4500 | " | 16, '07 | 4500 | 18 | 6 | 6 |
| | | | | | 455 | \$4550 | | 405 | | \$40500 | \$36450 | | | \$36450 | | 500 | |

Call No. 2—40%—Payable May 15, 1907.

| Shareholders. | Address. | No. of Shares. | Amount of Call. | Interest on Overdue. | Cash Received. | | Date Received. | | C.B. Fol. | S.L. Fol. |
|---------------|-----------------|----------------|-----------------|----------------------|----------------|--|----------------|---------|-----------|-----------|
| | | | | | | | | | | |
| Allan, Samuel | Barrie, Ont. | 50 | \$2000 | | \$2000 00 | | 1907 | May 13 | 60 | 1 |
| Aikens, Thos. | Meaford, Ont. | 40 | 1600 | | 1600 00 | | " | " 14 | 62 | 2 |
| Bailey, Wm. | Galt, Ont. | 40 | 1600 | 8 00 | 1608 00 | | " | June 15 | 64 | 3 |
| Brown, James | Berlin, Ont. | 25 | 1000 | 10 00 | 1010 00 | | " | July 14 | 62 | 4 |
| Cook, David | Berlin, Ont. | 30 | 1200 | | 1200 00 | | " | May 15 | 64 | 5 |
| Cross, Alex. | Stratford, Ont. | 50 | 2000 | | 2000 00 | | " | " 15 | 64 | 6 |
| Darwin, Chas. | Stratford, Ont. | 40 | 1600 | | 1600 00 | | " | " 14 | 62 | 7 |
| Dick, John | Preston, Ont. | 10 | 400 | | 400 00 | | " | " 13 | 60 | 8 |
| | | 285 | \$11400 | 18 00 | \$11418 00 | | | | | |

Form of Instalment Receipt.

THE TORONTO YEAST CO.
LIMITED.

INSTALMENT RECEIPT.

No. 12.

Samuel Allan, Barrie, Ont.

Second Call of 40 Per Cent.

On 50 Shares of \$100 each.

Amount, \$2000.

S.L. Fol. 1.

Dated May 13, 1907.

Received Receipt for above Instalment.

SAMUEL ALLAN.

No. 12.

INSTALMENT RECEIPT.

50 Shares,
\$2000.

THE TORONTO YEAST COMPANY, LIMITED.

RECEIVED from Samuel Allan, the sum of Two Thousand Dollars, being the Second Call of Forty per cent. on Fifty Shares of the Capital Stock of **The Toronto Yeast Company, Limited**, said Shares having been reserved and set apart for him, or his assigns, on condition that he, or they, fulfil the terms of the subscription.

IN WITNESS WHEREOF we hereunto subscribe our names and affix the Corporate Seal of the Company this 13th day of May, 1907.

CHAS. DARWIN,

Secretary.



JAMES BROWN,

President.

Form of Stock Certificate.

Certificate No. 5.

For 30 Shares,

Issued to

DAVID COOK,

Berlin, Ont.

Dated July 3, 1907.

From whom transferred

Dated 190...

Received Certificate No. 5 for
30 Shares this 6th day of July,
1907.

DAVID COOK.

Number
5Authorized Capital Stock,
\$100,000.Number of Shares,
1,000 of \$100 each.Shares
30

This Certifies that

DAVID COOK

is the owner of Thirty fully paid Shares of One Hundred dollars
each of the Capital Stock of**The Toronto Woodenware Company, Limited.**The said Shares are transferable only on the Books of the Company
in person or by Attorney on surrender of this Certificate.

Seal.

In Witness Whereof the said Company has caused this
Certificate to be signed by the duly authorized officers under the
Corporate Seal of the Company this 3rd day of July, 1907.

CHAS. DARWIN,

Secretary.

JAMES BROWN,

President.

held by the shareholders. Whenever shares are transferred the transferring shareholder returns his certificate to the Company and a new certificate is issued to the purchaser for the shares transferred; if the seller still retains any shares he receives a new certificate also. The Certificate returned should be stamped "Cancelled" and pasted to the proper stub in the Certificate Book.

Form of Transfer Book.

| | |
|----------------------|---|
| Share Led. Folios | FOR VALUE RECEIVED. I, James Clark, do hereby assign and transfer to William Scott, all my right, title, and interest in Ten Shares of the Capital Stock of <i>The Toronto Woodeware Company, Limited</i> , on which has been paid the sum of One Thousand Dollars, and which are now standing in my name on the books of the said Company. |
| 18. | WITNESS my hand at the office of the Company, in the City of Toronto, this 15th day of October, 1907. Witness : D. HAMILTON, JAMES CLARK. |
| 22. | I HEREBY ACCEPT the foregoing Transfer of Ten Shares of the Capital Stock of <i>The Toronto Woodeware Company, Limited</i> . Dated this 15th day of October, 1907. Witness : D. HAMILTON. WILLIAM SCOTT. |

Transfer Book. When shareholders are desirous of transferring any or all of their shares to another person, a regular form of transfer must be signed by the transferor for this purpose. These forms are bound together in a book kept at the Company's office, and generally include not only the transfer, but an agreement to be signed by the transferee in which he formally accepts the stock. These transfers and acceptances should be kept in the Company's possession, as they are generally the only written evidence it has of the transaction.

Some companies have to enter up so many transfers that they are obliged to employ a person for the special purpose of keeping the Transfer Book. This person is known as the Transfer Clerk. Shares are frequently transferred by brokers holding a power of attorney from the transferor; in such cases the power of attorney should be filed carefully away, or attached to the actual transfer. Forms for this purpose are commonly printed on the back of the Stock Certificates, as follows:—

*For value received,.....hereby assign and transfer unto.....
.....share... of the capital stock represented by the within certificate,
and do hereby constitute and appoint my*

attorney, to transfer the said stock on the books of the within named company, with full power of substitution in the premises.

.....
Date,19...

Signed in the presence of
.....

In passing, it may be well to call attention to the fact that shares not fully paid up can only be transferred with the consent of the directors of the company; indeed, this consent is required by many companies even after the stock has been fully paid up, to prevent the shares getting into the hands of undesirable persons.

Register of Transfers. Referring back to clause (f) of section 113 of the Ontario Companies Act as quoted on page 25, it will be seen that Joint Stock Companies are required to keep a record of the date and other particulars of all transfers of stock in their order. Such a record should be kept in a careful and systematic manner, otherwise the accounts of the individual shareholders are not likely to be reliable. Several forms are in use for this purpose, but the following one will be found suitable to the needs of most companies. An extra column may be added to record the serial numbers of the shares transferred if desired. The information recorded in this Register is, of course, obtained from the Transfer Book; the necessary entries in the Share Ledger may be posted either from the register or the original transfers.

The Share Ledger. The purpose of this book, which is frequently called the Stock Ledger, is to show at a glance full information regarding the stock held by individual shareholders. An account is kept with each of them showing his name, occupation, address, the number of shares he acquires, transfers or holds, the par value of said shares and the amounts paid in or remaining unpaid thereon. The various entries are usually obtained from the Application and Allotment Book, the Instalment Receipt Stubs and the Transfer Register, although many prefer posting all cash items from the cash book.

We submit herewith several forms of stock ledgers, all of which have been found to be thoroughly practical.

In share ledger "A" Sinclair has been allotted 120 shares of stock on Jan. 8, 1907, and has paid a first call of 40 per cent. thereon on Jan. 15th. As all of the entries under the headings "Shares" and "Par Value of Shares" are self-explanatory no remarks need be made about these; the other columns, however, may not be so easily understood. As 40 per cent., or \$40 per share, is the amount paid on the first call, this mul-

Form of Transfer Register.

| No. of Transfer. | Date of Transfer. | | | Transferor's | | | Shares Transferred | | | | Transferee's | | | |
|------------------|-------------------|--------|------|--------------|-----------|------------|--------------------|------------|----------|---------|---------------|-------------|------------|------------|
| | Year. | Month. | Day. | Name. | Address. | S. L. Fol. | How Many. | Par Value. | Paid in. | Unpaid. | Name. | Occupation. | Address. | S. L. Fol. |
| 1 | 1907 | Apr. | 3 | Jas. Wood. | Guelph. | 3 | 10 | \$ 1000 | \$ 1000 | | Jas. Walters. | Lawyer. | Toronto. | 12 |
| 2 | " | May. | 10 | A. T. Long. | Ottawa. | 6 | 15 | \$ 1500 | \$ 1500 | | Thos. Green. | Merchant. | Ottawa. | 14 |
| 3 | " | Sept. | 12 | T. S. Small. | Goderich. | 8 | 10 | \$ 1000 | \$ 800 | 200 | Saml. Morton. | Accountant. | Stratford. | 16 |
| 4 | " | Oct. | 18 | Wm. Hunter. | London. | 9 | 7 | \$ 700 | \$ 700 | | Alex. Arnold. | Merchant. | Toronto. | 18 |

multiplied by the number of shares gives us \$4,800 as the "Paid-Up Stock acquired." This amount deducted from the Par Value of the stock held gives the balance remaining unpaid. On April 14, 1907, Sinclair transfers 40 shares and as \$40 has been paid on each of these shares he is really transferring \$1,600 Paid-Up Stock; this deducted from the \$4,800 he held before the transfer leaves him \$3,200 Paid-Up Stock; subtract the \$3,200 from \$8,000 Par Value and the difference, \$4,800, is the amount remaining unpaid on the 80 shares now held by Sinclair. Call No. 2, amounting to 40 per cent., or \$40 per share, is paid by Sinclair on the 80 shares held by him on June 8th, 1907; this gives \$3,200 which has to be added to the Paid-Up Stock previously held by him and deducted from the previous unpaid balance. On August 10th, 1907, he buys 30 shares of the same stock from another shareholder, and as \$80 per share has already been paid in on it he thus increases his Paid-Up Stock by \$2,400, making a total of 110 shares of stock on which \$8,800 has been paid and \$2,200 remains unpaid. The remaining transactions are dealt with in a similar manner.

Many accountants prefer the arrangement of the columns in Share Ledger "B" to that shown in "A." The information given is exactly the same in both cases, so that a detailed explanation of the entries given in the illustration is entirely unnecessary. Where it is desired, the columns dealing with the par value of the shares may be omitted; this, however, is not recommended.

Share ledger "C" is an excellent form. It may be arranged with the Share Account beneath the Cash Account or alongside of it. The Share Account contains a record of the shares only; the Cash Account of the amounts due on Call and paid thereon. The same transactions have been entered as in ledgers "A" and "B" in order that the different forms may be compared more readily. On January 8th, when the allotment was made, the number of shares allotted was entered in the Share Account; at the same time the Cash Account is charged up with the amount of Call No. 1 and credited with the cash when paid. On April 14th, 40 shares are transferred and entered accordingly in the Share Account, no entry being made in the Cash Account as the latter is not affected in any way. On June 8th, Call No. 2 is made and as Sinclair holds 80 shares on this date, he is charged with \$40 per share on this number, and credited when the cash is paid. The transfer of 30 shares from Watt on August 10th increases Sinclair's shares to 110, on which he is charged \$20 per share for the third and last call on September 16th. Payment being made on this date his Cash Account balances; when it does not balance it indicates the amount unpaid on Calls that have been made.

Share Ledger "A."

WILLIAM SINCLAIR, Grocer, Guelph, Ont.

| Date. | | | Particulars. | Fol. or No. | Shares. | | | Par Value. | | | Paid Up Calls. | | | Unpaid Stock. |
|-------|--------|------|------------------------|-------------|--------------|-----------|------------|--------------|-----------|------------|----------------|-----------|------------|---------------|
| Year. | Month. | Day. | | | Transferred. | Acquired. | Bal. Held. | Transferred. | Acquired. | Bal. Held. | Transferred. | Acquired. | Bal. Held. | |
| 1907 | Jan. | 8 | Allotment, | 1 | | 120 | 120 | | \$12000 | \$12000 | | | | \$12000 |
| " | " | 15 | Call No. 1, 40%, | 6 | | | 120 | | | 12000 | | 4800 | 4800 | 7200 |
| " | Apr. | 14 | Transfer to S. Gray, | 3 | 40 | | 80 | 4000 | | 8000 | 1600 | | 3200 | 4800 |
| " | Jun. | 8 | Call No. 2, 40%, | 38 | | | 80 | | | 8000 | | 3200 | 6400 | 1600 |
| " | Aug. | 10 | Transfer from L. Watt, | 16 | | 30 | 110 | | 3000 | 11000 | | 2400 | 8800 | 2200 |
| " | Sep. | 16 | Call No. 3, 20%, | 84 | | | 110 | | | 11000 | | 2200 | 11000 | |
| " | Nov. | 7 | Transfer to C. Dodds, | 34 | 60 | | 50 | 6000 | | 5000 | 6000 | | 5000 | |

Share Ledger "B."

WILLIAM SINCLAIR, Grocer, Guelph, Ont.

| Date. | | | Particulars. | Fol. or No. | Transferred. | | | Acquired. | | | Balances. | | | Unpaid Stock. |
|-------|--------|------|------------------------|-------------|--------------|------------|----------|-----------|------------|----------|-----------|------------|----------|---------------|
| Year. | Month. | Day. | | | Shares. | Par Value. | Paid Up. | Shares. | Par Value. | Paid Up. | Shares. | Par Value. | Paid Up. | |
| 1907 | Jan. | 8 | Allotment. | 1 | | | | 120 | 12000 | | 120 | 12000 | | 12000 |
| " | " | 15 | Call No. 1, 40%. | 6 | | | | 120 | | 4800 | 120 | 12000 | 4800 | 7200 |
| " | Apr. | 14 | Transfer to S. Gray. | 3 | 40 | 4000 | 1600 | | | | 80 | 8000 | 3200 | 4800 |
| " | June | 8 | Call No. 2, 40%. | 38 | | | | | | 3200 | 80 | 8000 | 6400 | 1600 |
| " | Aug. | 10 | Transfer from L. Watt. | 16 | | | | 30 | 3000 | 2400 | 110 | 11000 | 8800 | 2200 |
| " | Sept. | 16 | Call No. 3, 20%. | 84 | | | | | | 2200 | 110 | 11000 | 11000 | |
| " | Nov. | 7 | Transfer to C. Dodds. | 34 | 60 | 6000 | 6000 | | | | 50 | 5000 | 5000 | |

Share Ledger "C."

WILLIAM SINCLAIR,
Guelph, Ont.

Grocer.

SHARE ACCOUNT—\$100 EACH.

| Shares Disposed Of. | | | | Shares Acquired. | | | | Balances Held | |
|---------------------|-----|-----------------------|----------------|------------------|-----|------------------------|----------------|---------------|----------------|
| Date. | Fo. | Particulars. | No. of Shares. | Date. | Fo. | Particulars. | No. of Shares. | Date. | No. of Shares. |
| 1907. | | | | 1907. | | | | | |
| Apl. 14 | 3 | Transfer to S. Gray. | 40 | Jan. 8 | 1 | Allotment. | 120 | Jan. 8 | 120 |
| Nov. 7 | 34 | Transfer to C. Dodds. | 60 | Aug. 10 | 16 | Transfer from L. Watt. | 30 | Apl. 14 | 80 |
| | | | | | | | | Aug. 10 | 110 |
| | | | | | | | | Nov. 7 | 50 |

Dr.

CASH ACCOUNT.

Cr.

| Date. | Particulars. | Fo. | Amt. Due. | Date. | Particulars. | Fo. | Amt. Paid. |
|----------|------------------------------|-----|------------|----------|--------------|-----|------------|
| 1907. | | | | 1907. | | | |
| Jan. 8 | To Call 1—40% on 120 Shares. | 2 | 4800 00 | Jan. 15 | By Cash. | 86 | 4800 00 |
| June 8 | To Call 2—40% on 80 Shares. | 16 | 3200 00 | June 8 | " do | 38 | 3200 00 |
| Sept. 16 | To Call 3—20% on 110 Shares. | 20 | 2200 00 | Sept. 16 | " do | 84 | 2200 00 |
| | | | \$10200 00 | | | | \$10200 00 |

Dividend Book. This book is simply a list of the shareholders with their addresses, against which are written the number of shares held by each and the dividend payable thereon. In some cases an extra column is ruled in which the shareholder signs an acknowledgment of the receipt of his dividend; this, however, is seldom done, as dividends are nearly always paid by cheques drawn in such a way that the endorsements thereon answer this purpose.

FORM OF DIVIDEND BOOK.

THE HAMILTON SOAP COMPANY, LIMITED.

Dividend No. 5, 7 per cent., declared June 29, 1907.

| Names of Shareholders. | Addresses. | No. of Shares. | Amount of Dividend. |
|------------------------|------------------|----------------|---------------------|
| Geo. Harris | Dundas, Ont. | 40 | \$280 00 |
| Jno. Lester | Burlington, Ont. | 20 | 140 00 |
| Edw. Frame | Grimsby, Ont. | 30 | 210 00 |
| Chas. Dewar | Beamsville, Ont. | 50 | 350 00 |
| Geo. Gray | Ancaster, Ont. | 20 | 140 00 |
| Chas. Murray | Dundas, Ont. | 40 | 280 00 |
| | | <u>200</u> | <u>\$1400 00</u> |

FORM OF REGISTER OF DIRECTORS.

| Date Elected. | Names. | Occupation. | Address. | Date Retired. | Remarks. |
|-----------------|-------------|-------------|----------------------|-----------------|----------|
| 1907 Jan. 30 | Henry Green | Merchant | 23 Front E., Toronto | 1908 Jan. 30 | |
| " " | James Black | " | 53 King W., " | " " | |
| " " | Thos. White | " | 31 Youge St., " | " " | |
| " " | Wm. Gray | " | 134 Yonge St., " | " " | |
| " " | John Brown | " | 48 Bay St., " | " " | |
| 1908 Jan. 30 | Henry Green | Merchant | 23 Front E., Toronto | | |
| " " | James Black | " | 53 King W., " | | |
| " " | Wm. Gray | " | 134 Yonge St., " | | |
| " " | Alex. Smith | " | 214 Spadina Av. " | | |
| " " | Robt. Young | " | 518 Yonge St., " | | |

Register of Directors. The use of this book will be readily understood by studying the illustration given herewith. As the Board of Directors seldom consists of more than five members of the Company, it is better to write out a new list each year rather than attempt to use the same list with corrections. We submit a specimen Register written up for two successive years.

The Minute Book. The use of this book has already been explained on page 22, followed by specimen Minutes of a Shareholders' meeting.

Examination Questions.

22. Mention briefly the chief points of difference between the book-keeping of a Joint Stock Company and that of a Partnership.

23. Companies are required by law to keep certain records or statistics; what are the requirements of the Ontario Companies Act in this respect?

24. What are the rights of shareholders and creditors in regard to the examination of such books?

25. The Ontario Companies Act requires certain books of account to be kept; quote as nearly as you can the portion of the Act dealing with this matter.

26. What are the requirements of the Ontario Act respecting Minute Books?

27. State the requirements of the Ontario Act respecting an Annual Statement of Income and Expenditure.

28. What are the requirements respecting an Annual Summary of the Affairs of incorporated companies in the Province of Ontario?

29. Specify the books generally used by Joint Stock Companies in addition to those used by other commercial concerns.

30. Explain the use of the Memorandum of Agreement and Stock Book in connection with the incorporation of a Company.

31. Draw up a Memorandum of Agreement and Stock Book for the Ottawa Lumber Co., Limited, which is being organized with an authorized capital of \$150,000 divided into 1,500 shares of \$100 each. Enter up the names of seven subscribers for stock aggregating \$80,000, signing your own name as witness.

32. Explain the use of an Application and Allotment Book.

33. Copy the form of Application and Allotment Book given on page 30.

34. The Lake Ontario Steamship Co., Limited, offer for public subscription 2,000 shares of their stock, par value \$100 each, applications to be sent to the National Trust Co., Toronto, accompanied by a deposit

of 10 per cent. of the amount subscribed for, balance payable on allotment. Prepare form of Application and Allotment Book with nine applications entered for consideration by the Directors at their meeting this afternoon.

35. The Directors accepted seven of the aforesaid applications and declined the other two, the 10 per cent. deposit being returned to the latter. Write Letters of Allotment and Regret to one of those accepted and refused respectively.

36. Complete the above-mentioned Application and Allotment Book by entering the Cash due on allotment and also the amounts returned in consequence of non-acceptance of applications.

37. Copy form of Instalment Book given on page 31.

38. Prepare an Instalment List of ten shareholders for a third and last Call of 30 per cent. upon the stock of their Company, showing dates when payment was made.

39. Write out a proper Instalment Receipt for the first shareholder on the foregoing list, showing stub for same.

40. Prepare a suitable form of Stock Certificate with stub for the Toronto Yeast Co., Limited, which has been incorporated under the Ontario Companies Act, with a share capital of \$75,000 divided into 750 shares of \$100 each. Make the Certificate for 15 shares in favor of Charles Thompson.

41. Write the form of Transfer generally printed on the back of Stock Certificates with blanks properly filled in.

42. Prepare a specimen page of a Transfer Book, leaving the usual blanks unfilled.

43. Complete the above form by entering a transfer of ten shares from James Morris to Thos. Miller.

44. Copy form of Transfer Register given on page 36.

45. Add three transfers of fully paid stock to those given in the foregoing Register.

46. Copy carefully Share Ledger "A" given on page 38, satisfying yourself that you understand the use of the various columns.

47. Copy Share Ledger "B."

48. Copy Share Ledger "C."

49. The Galt Foundry Co., Limited, is organized with six shareholders, who subscribe as follows: Alexander Bruce, 40 shares; William Acton, 25 shares; Thomas Scott, 25 shares; James Hamilton, 20 shares; Donald Stewart, 30 shares; Geo. Murray, 30 shares. The shares are \$100 each and they pay a first instalment of 40 per cent. on Aug. 1, 1907; Bruce transfers 15 shares to Hamilton on Oct. 3, 1907; Acton transfers 15 shares to Scott on November 8, 1907; they all pay a second call of

35 per cent. on Dec. 1, 1907; Stewart transfers 10 shares to Bruce on Dec. 31, 1907; Murray transfers 15 shares to Acton on Dec. 31, 1907; they all pay a final call of 25 per cent. on March 1, 1908; Bruce transfers all his stock to Acton on April 3, 1908. Write Share Ledger account for Alexander Bruce, using form "A."

50. Write up Share Ledger Account for William Acton, using Form "B."

51. Using Form "C," write Share Ledger account for Donald Stewart.

52. Using Form "C," write up a Stock Ledger account for a shareholder whose transactions with the company consisted of a subscription of 75 shares of \$50 each on which 30 per cent. was immediately paid; a second payment of 30 per cent.; a sale of 25 shares; a third payment of 20 per cent.; a purchase of 15 shares; a final payment of 20 per cent.; and the transfer of the whole of his stock.

53. Prepare a Dividend Sheet for a Company having ten shareholders and declaring a dividend of 8 per cent. on Oct. 31, 1907.

54. Prepare a Register of Directors, containing the names of five elected Oct. 15, 1907, all of whom were re-elected Oct. 15, 1908.

55. Copy carefully the Minutes given on page 22.

CHAPTER VI.

OPENING ENTRIES IN BOOKS OF ACCOUNT.

Entries in Books of Account. Assuming that the student is familiar with the forms given in the previous Chapter, and that he has a fair knowledge of the principles of Double-Entry Bookkeeping, he should have no difficulty in understanding the special entries to be made in the Books of Account of a Joint Stock Company as distinguished from those of an unincorporated Company. In this chapter the opening entries to be made in the books of a newly-organized Company are first explained; then those resulting from the purchase of a going concern by a Company and subsequently those relating to the amalgamation of several companies.

The Capital Stock Account. In the General Ledger of a Joint Stock Company the account which corresponds with the Capital account of an unincorporated concern is called Capital Stock, and may be kept in such a way as to represent either the Paid-up Capital, the Subscribed Capital or the Authorized Capital of the Company. For the purpose of comparison we shall make the opening entries for a Company in all of these three ways.

Paid-Up Capital. Examination Question 56. A Company is incorporated with an Authorized Capital of \$150,000 divided into 1,500 shares of \$100 each. Subscriptions are received and allotments are made as follows: F. B. Higgins, 200 shares; J. Powell, 250 shares; L. C. Todd, 110 shares; J. J. Barnes, 180 shares; W. P. Dandy, 170 shares; the other shares remaining unallotted. A first call of 30 per cent. was made upon allotment, the balance being left subject to the call of the Directors. Payment was received in due course in full of the Call. Make the required entries in the Books of Account in such a way that the Ledger Account for capital stock will show Paid-up Capital. Answer.—We will assume that an Allotment List has been prepared similar to that shown on page 30, and that the first three columns showing the number of shares allotted, the par value of the shares, and the amount of the first call thereon, have been properly filled; no entries have yet been made in the Cash Received column. With the Allotment List of the above problem before you, you will see that the total Subscribed Capital is \$91,000, on which a first call of 30 per cent., amounting to \$27,300, has been made. Then make the following journal entry to be subsequently posted to the General Ledger, charging the shareholders with the amount of the first call;

| | |
|------------------------|----------|
| Shareholders | \$27,300 |
| To Capital Stock | \$27,300 |

Call No. 1, 30 per cent., as per Allotment List (or "as per following list": and enumerate them in the Journal.)

In dealing with the accounts of the shareholders in the General Ledger it is customary, when there is a large number of shareholders, to treat them collectively under the Ledger title "Shareholders," "Subscribers," or some similar name. When this is done it is a great convenience to enter, each on a separate line, the names of the individual shareholders with the amounts of their respective calls on the debit side of "Shareholders" account in the Ledger, and when the calls are paid to credit this account by entering the amounts received against the names of those who pay them in the same manner as Petty Personal accounts are usually dealt with. If preferred, separate General Ledger accounts may be kept for each shareholder, in which case the following journal entry would be made:

| | |
|------------------------|----------|
| F. B. Higgins | \$6,000 |
| J. Powell | 7,500 |
| L. C. Todd | 3,300 |
| J. Barnes | 5,400 |
| W. P. Dandy | 5,100 |
| To Capital Stock | \$27,300 |

Call No. 1, 30 per cent. upon the Subscribed Capital.

The Cash received in payment of Calls should be kept separate from that received in the ordinary course of business, either by entering it in a special column, or on a special page, or even in a separate Cash Book, if there are many shareholders. Each shareholder is credited in this special Cash Book with the amount of his payment and the total receipts from this source are ultimately carried to the General Cash Book to the credit of "Shareholders," whence they are posted to the General Ledger. This is the same in effect as making a Journal entry:

| | |
|-----------------------|----------|
| Cash | \$27,300 |
| To Shareholders | \$27,300 |

When posted "Shareholders" account will balance if the calls have all been paid; any difference between the two sides of this account will show Calls in arrears. Concurrently, the amount paid in by each shareholder should be posted from the special Cash Book to the column provided in the Instalment List for this purpose; an inspection of this list should at any time show the individual amounts remaining unpaid.

If individual accounts are kept in the General Ledger, then the entry for the receipt of the cash would be made the same way as for money received in payment of any ordinary account, that is, each person would

be credited through the Cash Book for the cash paid in settlement of the first call. Expressed in Journal form, this Cash Book entry would be :

| | | |
|------------------------|----------|---------|
| Cash | \$27,300 | |
| To F. B. Higgins | | \$6,000 |
| J. Powell | | 7,500 |
| L. C. Todd | | 3,300 |
| J. Barnes | | 5,400 |
| W. P. Dandy | | 5,100 |

Provided similar entries are made for each call, the Capital Stock account will always show the Paid-up Capital. From the Instalment Book accounts in the Share Ledger would afterwards be opened and entries made as previously described. The Special Share Cash Book, the General Cash Book and the General Ledger are shown below as they should appear after the foregoing entries have been made :

SPECIAL SHARE CASH BOOK.

| Dr. | | CASH. | | | | | |
|------|---|---------------|--------------------------------------|-----------|---|------------|-------------|
| 1908 | | | | Ins. List | | | |
| Jan. | 3 | F. B. Higgins | 1st call of 30% on 200 shares | Fol. | 1 | \$6,000 00 | |
| " | 3 | J. Powell | " " 250 " | | 1 | 7,500 00 | |
| " | 4 | L. C. Todd | " " 110 " | | 1 | 3,300 00. | |
| " | 4 | J. Barnes | " " 180 " | | 1 | 5,400 00 | |
| " | 4 | W. P. Dandy | " " 170 " | | 1 | 5,100 00 | |
| " | 5 | | Total carried to Gen. Cash Book C.B. | | 3 | | \$27,300 00 |

GENERAL CASH BOOK.

| Dr. | | CASH. | | | |
|--------|--------------|-----------------------------|--|-------|-------------|
| 1908 | | | | G. L. | |
| Jan. 5 | Shareholders | Receipts from Call No. 1 as | | | |
| | | per Share Cash Book, | | | |
| | | Fol. 2 | | 1 | \$27,300 00 |

GENERAL LEDGER.

CAPITAL STOCK.

[illegible]

SHAREHOLDERS.

| | | | | | | | | | |
|--------|------------|-------|---|-------------|--------|---------|-------|---|-------------|
| 1908 | | | | | 1908 | | | | |
| Jan. 8 | Call No. 1 | J. F. | 2 | \$27,300 00 | Jan. 5 | By Cash | C. B. | 3 | \$27,300 00 |

Instead of being entered as above, "Shareholders" account might have been posted in the following form :

SHAREHOLDERS.

| | | | | | | | | | |
|---------|--------------------|------|-----------------|--|---------|-----------|------|-----------------|--|
| 1908 | | | | | 1908 | | | | |
| Jan. 3, | F. B. Higgins..... | J. 1 | \$6,000 | | Jan. 3, | Cash..... | C. 2 | \$6,000 | |
| " " | J. Powell..... | J. 1 | 7,500 | | " " | Do. | C. 2 | 7,500 | |
| " " | L. C. Todd..... | J. 1 | 3,300 | | " 4, | Do. | C. 4 | 3,300 | |
| " " | J. Barnes..... | J. 1 | 5,400 | | " " | Do. | C. 4 | 5,400 | |
| " " | W. P. Dandy..... | J. 1 | 5,100 | | " " | Do. | C. 4 | 5,100 | |
| | | | <u>\$27,300</u> | | | | | <u>\$27,300</u> | |

Each Call and the payment thereof would be handled in the manner above described, the result being that Capital Stock would always show Paid-up Capital, subject to any arrears shown by the balance of "Shareholders" account.

Subscribed Capital. Examination Question 57. Show the required entries for Exam. Question 56 provided Capital Stock Account is kept in such a way as to represent the Subscribed Capital instead of the Paid-up Capital. Answer.—This is not usually a desirable method of dealing with the Capital Stock Account, and has little to recommend it except perhaps that in this way the aggregate amount of Subscribed Stock not called may be shown. The entries to be made are substantially the same as those already explained. The Allotment Book, or the Stock Book and Applications, shows the total Subscription of \$91,000 on which a first call of 30 per cent., amounting to \$27,300, has been made, leaving \$63,700 uncalled. A special account may be opened for this uncalled stock, which must not be confused with the stock not yet subscribed for. This would be done by making a special entry as follows for the total amount of stock subscribed :

Subscription \$91,000
 To Capital Stock \$91,000

Total subscription as per stock book and applications.

This would be followed by a second entry for the amount of the first call :

Shareholders \$27,300
 To Subscription \$27,300

Call No. 1, 30 per cent. on subscribed stock.

When these entries are both posted the difference between the two sides of Subscription Account will show the amount of stock subscribed but not yet called, the Shareholders account will show the amount called and the Capital Stock account will show the total amount subscribed. The entries for the Cash received in payment of calls are exactly the same as those already explained in the answer to the preceding problem. Each subsequent call would require an entry charging Shareholders and crediting Subscription for the aggregate amount of the call. As soon as the Cash received in payment of calls has been posted to the proper accounts Shareholders account should balance; if there is any difference it represents money due on calls but not yet paid in, in other words calls in arrears. In this case the General Ledger would appear as follows :

CAPITAL STOCK.

| | |
|-----------------------------------|---------|
| 1908 | |
| Jan. 3, By Subscription, J. 2.... | \$91000 |

SUBSCRIPTION.

| | | | |
|----------------------------------|---------|----------------------------------|---------|
| 1908 | | 1908 | |
| Jan. 3, To Cap Stock, J. 2 | \$91000 | Jan. 3, By Call No. 1, J. 2..... | \$27300 |

SHAREHOLDERS.

| | | | |
|-----------------------------------|---------|----------------------------|---------|
| 1908 | | 1908 | |
| Jan. 3, To Call No. 1, J. 2 | \$27300 | Jan. 5, By Cash, C. 3..... | \$27300 |

Another method in common use, which might be given as an alternative for the above, is to debit Shareholders account for the total subscriptions and credit it for the payment made, thus allowing the Uncalled Stock to stand as a debit balance in Shareholders Account instead of opening a separate account for it. This plan, however, is objectionable on the ground that the Shareholders, although liable at the call of the Directors, are not liable until the call has actually been made, and therefore should not be made to appear on the books of the Company as owing a debt, which they do not yet owe, and which they may never be asked to assume. If, on the other hand, the subscriptions have been made on the understanding that payment in full would be required immediately after allotment or in instalments on dates already determined Subscription account may be eliminated. In the former case Shareholders account would at once be debited with the full amount subscribed and Capital Stock credited; as the cash was received in settlements Shareholders account would be credited from the Cash Book. Provided pay-

ment were to be made in three instalments—30 per cent. on allotment, 50 per cent. in three months, and the balance in 6 months—the following Journal entry would be made:

| | |
|---|----------|
| Instalment No. 1, 30 per cent., due Jan. 5, 1907... | \$27,300 |
| Instalment No. 2, 50 per cent., due Apr. 5, 1907... | 45,500 |
| Instalment No. 3, 20 per cent., due July 5, 1907... | 18,200 |
| To Capital Stock | \$91,000 |

For subscribed capital as per stock book and minute book, page 4.

Each Instalment account is handled in the same way as Shareholders account, explained above and on page 46. The names of the individual shareholders may be placed under each Instalment account on the principle of the Petty Personal account, charging them with their respective instalments and crediting them as payments are made. Cash receipts on account of shares would be entered either in a special Share Cash book or directly into the General Cash Book, whence postings would be made to the Instalment accounts. Assuming only the first instalment of above to have been paid, the General Ledger would appear as follows:

CAPITAL STOCK.

1907
|| Jan. 5. By Subscriptions, J. 1... \$91000

INSTALMENT No. 1—Due Jan. 5, 1907.

| 1907 | | | 1907 | | |
|-----------------------------|------|----------------|-----------------------|------|----------------|
| Jan. 5, F. B. Higgins | J. 1 | \$6000 | Jan. 3, By Cash | C. 2 | \$6000 |
| " 5, J. Powell | J. 1 | 7500 | " 3, " | C. 2 | 7500 |
| " 5, L. C. Todd | J. 1 | 3300 | " 4, " | C. 4 | 3300 |
| " 5, J. Barnes | J. 1 | 5400 | " 4, " | C. 4 | 5406 |
| " 5, W. P. Dandy | J. 1 | 5100 | " 4, " | C. 4 | 5100 |
| | | <u>\$27300</u> | | | <u>\$27300</u> |

INSTALMENT No. 2—Due April 5, 1907.

| 1907 | | |
|-----------------------------|------|---------|
| Jan. 5, F. B. Higgins | J. 1 | \$10000 |
| " 5, J. Powell | J. 1 | 12500 |
| " 5, L. C. Todd | J. 1 | 5500 |
| " 5, J. J. Barnes | J. 1 | 9000 |
| " 5, W. P. Dandy | J. 1 | 8500 |

INSTALMENT No. 3—Due July 5, 1907.

| 1907 | | |
|-----------------------------|------|--------|
| Jan. 5, F. B. Higgins | J. 1 | \$4000 |
| " 5, J. Powell | J. 1 | 5000 |
| " 5, L. C. Todd | J. 1 | 2200 |
| " 5, J. J. Barnes | J. 1 | 3600 |
| " 5, W. P. Dandy | S. 1 | 3400 |

In connection with the above, it might be well to impress upon the reader that in the event of there being a large number of shareholders

the Application and Allotment Book would be ruled to show the details of the different instalments and only totals would be posted from the Journal to the different Instalment accounts.

Authorized Capital. Examination Question 57*b*. Make the entries for the transactions in Question No. 56 in such a way that Capital Stock account will show the Authorized Capital. Answer.—This necessitates the opening of a special account to keep track of the Unsubscribed Stock, which may also be called Unissued Stock, or, as is frequently done, Treasury Stock. The expression Treasury Stock is by many people restricted to stock which has been fully paid up and subsequently given back to the Company as a donation by specially interested shareholders. Journalize as follows :

| | |
|-----------------------------|-----------|
| 1. Unsubscribed Stock | \$59,000 |
| Subscription | 91,000 |
| To Capital Stock | \$150,000 |

To show total Authorized Capital, of which \$91,000 has been subscribed per Allotment Book.

| | |
|-----------------------|----------|
| 2. Shareholders | \$27,300 |
| To Subscription | \$27,300 |

For Call No. 1, 30 per cent., per Minute Book, page—

3. (In Cash Book)—

| | |
|-----------------------|----------|
| Cash | \$27,300 |
| To Shareholders | \$27,300 |

For cash received in payment of Call No. 1.

When the posting has been completed the General Ledger will show Unsubscribed Stock debited for \$59,000, which is the amount remaining unsubscribed. Subscription account will show a debit balance of \$63,700, which is the amount of Subscribed Stock not yet called in; Shareholders account will balance as before if the calls have been fully paid; Capital Stock will stand credited for \$150,000, which is the entire Authorized Capital of the Company. It is evident that in the future instead of crediting Capital Stock it will be necessary to credit Unsubscribed Stock, the debit balance of which always shows the amount of Unsubscribed Stock which the Company has at its disposal.

Call Accounts. In the foregoing explanations Shareholders account has been charged with the total amount due when a Call was made. Instead of doing this a special account for each Call may be opened on exactly the same principle as the Instalment accounts explained on page 50. When the first Call was made "Call No. 1" would be debited with the amount thereof and "Capital Stock" credited; cash received in payment of this Call would be credited through the Cash Book to "Call No. 1." The difference between the two sides of "Call No. 1" account show

the balance remaining unpaid on this Call. Similarly when the second Call was made "Call No. 2" account would be opened and handled in the same way. The names of the individual shareholders may, if desired, be entered under the Call accounts in the same manner as illustrated in connection with the Instalment accounts on page 50.

Preference Stock. Preference stock is stock which takes priority over the ordinary stock of a company to the extent set forth in its Letters Patent of Incorporation or in the special By-law passed for this purpose. The preference may consist of a stated rate per cent. dividend to be paid to holders of such stock before any dividends are paid to holders of ordinary shares, or it may carry with it almost any other special advantage which the Directors of the Company or the original incorporators may have desired to attach to it. Preferred stock is said to be Cumulative Preference Stock when in case of a shortage in dividends declared in any one year the deficit is payable out of the profits of the following years before a dividend can be declared on the Common Stock.

Entries for Preference Stock. The entries made in the books of the Company for Preference Shares are exactly similar to those made for the issue of Ordinary Shares except that two separate Capital Stock accounts must be kept, one for the Common Stock, and one for the Preferred Stock. For example, if a Company paid for a Patent \$25,000, of which \$5,000 was Preferred Stock and the rest Common, the Journal entry would be made as follows :

| | |
|------------------------------------|----------|
| Patent | \$25,000 |
| To Capital Stock (Preferred) | \$5,000 |
| To Capital Stock (Common) | 20,000 |

In the Stock Ledger the accounts of Preference shareholders must be kept distinct from those of Ordinary shareholders, and the Preference Stock Certificates should state clearly the conditions of the preference.

Examination Questions.

58. Distinguish between Paid-up Capital, Subscribed Capital and Authorized Capital.

59. The Galt Axe Factory was incorporated with an Authorized Capital of \$75,000 divided into 750 shares of \$100 each, of which shares were allotted as follows : A Garten, 100 shares ; D. Sidey, 80 shares ; G. Laird, 70 shares ; J. Thompson, 60 shares ; R. Scanlon, 50 shares. A first instalment of 40 per cent. was payable on date of allotment, the balance being left subject to call of Directors. Cash having been received in full of the above 40 per cent., make the necessary entries in all of the books of account of the Company in such a way that Capital Stock account in the Ledger will represent Paid-up Capital.

60. A second Call of 25 per cent. was made on the above stock six months after incorporation. Payment of same having been made in due course, make necessary entries and post to same Ledger as used in answering Question 59.

61. After payment of above Call, J. Robertson subscribed for forty shares of the Stock, paying in 65 per cent. thereon. Make entries to be posted to same ledger as used in answering Questions 59 and 60.

62. Make entries for Questions 59, 60 and 61 in such a way that Capital Stock account in the Ledger will represent Subscribed Capital.

63. Answer Questions 59, 60 and 61 in such a way that Capital Stock account in the Ledger will show the Authorized Capital.

64. Taking the list of shareholders given in Question 59, make the necessary entries provided subscriptions were made on the following terms and only the first instalment has yet been paid :

30 per cent. payable on February 1, 1907.

35 per cent. payable on April 1, 1907.

35 per cent. payable on June 1, 1907.

Instalments 2 and 3 are presumably not yet due.

65. Make additional entries for the payment of the Second Instalment of above.

66. Distinguish between Ordinary Stock and Preference Stock.

67. What is meant by Cumulative Preference Stock?

68. How may Preference Stock be created under the Ontario Companies Act?

69. What distinction must be made in the books of the Company between holders of Ordinary Shares and holders of Preference Shares?

70. In what respect would Preference Stock certificates differ from Ordinary Stock certificates?

CHAPTER VII.

PRELIMINARY EXPENSE AND GOODWILL ACCOUNTS.

Preliminary Expense Account. When a new Company is organized there are usually a great many expenses of a kind not likely to occur again, such as law fees, cost of charter, printing prospectus, commission for selling stock, account books, etc. In large concerns such as fire and life insurance companies, and quite frequently in mercantile or manufacturing companies, these expenses are usually so great as to make it absolutely unfair to charge them against the business of the first year. This is overcome by opening a special account called either Preliminary Expense account or Organization account, against which all items of this nature are charged, and, instead of treating the whole expense as a loss to the business for the current year it is spread over a period varying from two to five years, according to the amount of the account and the nature of the business. At the end of the year, instead of closing Preliminary Expense account into Profit and Loss like the Ordinary Expense account, only a portion of it is treated as a loss and the balance is carried forward as an Asset to the following year. For instance, if the Directors of a company consider it advisable to spread Preliminary Expenses, \$2,000, over a period of four years, a Journal entry would be made at the end of each of the four years as follows:—

| | |
|-----------------------------------|-------|
| Profit and Loss | \$500 |
| Preliminary Expense Account | \$500 |

Wrote off one-fourth of the preliminary expense account.

This would appear in the Profit and Loss account as an expense of \$500 in each of the four years. At the end of the first year the Balance Sheet would show Preliminary Expense account as an Asset of \$1,500; at the end of the second year, \$1,000; at the end of the third \$500, and at the end of the fourth it would have entirely disappeared.

Goodwill. Goodwill is the value placed upon the benefit arising from the connection and reputation which a business has acquired since its establishment. This value should be based upon the reasonable expectation the purchaser has of receiving a greater income than could be earned by him ordinarily without the benefit of such connection. In arriving at its money value the following points are usually considered:—

(a) The average Net Profits of the business for the past three or five years;

(b) The Interest on the Capital that has been required to carry on the business;

(c) The expenses of management not yet charged against Profits, including a fair sum for services rendered by the proprietor or proprietors.

In some cases the volume of business done irrespective of the profits is made the basis of value; in the case of a milk business, the number of cans of milk is often taken as the basis; similarly in other lines quantities, instead of values, are frequently taken, the purchaser using his own estimates of profits instead of those obtainable from the books of the seller. Assuming the average Net Profits of a business to have been \$4,000 per annum and the interest on the capital invested \$500 per annum, and the uncharged expenses of management \$1,500, the average Net Profit upon which to base a Goodwill value would be \$2,000. A certain number of years' Purchase is frequently agreed upon, varying according to the kind of business and the special conditions applying to each case; anywhere from one to five years is quite common. If a three years' Purchase were decided upon in the case given above, the amount to be paid for Goodwill would be three times \$2,000 (the average Net Profit for one year), or \$6,000; if four years' Purchase it would be \$8,000; two years' Purchase, 4,000, and so on. It must not be supposed, however, that Goodwill values are always determined mechanically in this way. There are many other points to be considered, and although it is impossible to lay down any set of rules which will cover them all, a few suggestions are here given that will prove applicable to many cases. Take, for example, the value of Goodwill in the following instances:—

(a) The Purchase of a commercial or manufacturing business from persons who are retiring from it entirely. The important consideration under these circumstances, apart from the apparent value of the goodwill as determined from the profits, would be the probable attitude of the sellers; would they be likely to do what they could to aid the business, or would they oppose it; or are conditions such that their influence will not count either way. A properly drawn agreement should give the necessary protection.

(b) The Purchase of an interest in a going concern. In this case the probable future profits, after taking into account any new arrangements made regarding salaries to partners, would be the chief point to consider.

(c) The Purchase of a business the value of which has been made chiefly on the personal reputation of its owner or owners. In addition to the considerations affecting the value of the business as based upon its past experience, the buyer would have to determine whether it was prob-

able that he could retain the business when it became generally known that the former owner was no longer connected with it.

The amount paid for Goodwill would appear in the Balance Sheet at the end of the year as an Asset, under the name of Goodwill. In the case of a limited company the Goodwill cannot fairly be written down, as the undistributed profits of the business would be lessened to this extent, which would be unjust to shareholders if dividends were withheld on account of deductions of this sort having wiped out the profits. A Company having a substantial reserve might write down Goodwill without sacrificing the interests of its shareholders; but in any event it would be incorrect to write it off through the Profit and Loss account.

Entries for transactions involving Goodwill appear in the next Chapter.

Examination Questions.

71. Explain what is meant by a Preliminary Expense Account.
72. Under what circumstances might the above account appear as an Asset on the books of the Company?
73. Supposing the Preliminary Expense account of a Company stands at \$1,200, what entries would be made to write this off in three years?
74. Write up Preliminary Expense Ledger account for the whole of the above period.
75. Define Goodwill.
76. If as an accountant you were asked to determine from the books the Goodwill value of a business, how would you proceed?
77. As a purchaser, what other considerations besides Profits might affect your opinion as to the Goodwill value?
78. How should Goodwill appear in the Balance Sheet of a Company?

CHAPTER VIII.

CONVERSION OF A PARTNERSHIP INTO A JOINT STOCK COMPANY.

The Incorporation of a Going Concern. Most Joint Stock Companies are the development of going concerns which have been taken over and paid for in shares of the new Company. Although the principles involved in the bookkeeping connected therewith are exactly the same as those described in Chapter 6, still their application introduces certain new features which require consideration. These are taken up in the problems which follow.

Exam. Ques. 79. G. Watson and T. M. Green are partners in a leather business and convert it into a Joint Stock Company under the name of The Watson-Green Leather Co., Limited, with an authorized capital of \$40,000 divided into 400 shares of \$100 each. The old business is purchased for \$20,000, to be paid in shares, of which Watson is to get \$12,000 and Green \$8,000. The other shareholders pay cash in full of their subscriptions, which are as follows: G. D. Blake, \$5,000; J. J. Foster, \$3,000; G. E. Smith, \$2,000, and E. Fowler, \$1,000.

The firm's Balance Sheet at the time of incorporation stood as follows:—

| LIABILITIES. | | ASSETS. | |
|-----------------------------|-----------------|---------------------------|-----------------|
| Bills Payable..... | \$7,000 | Cash in bank | \$1,000 |
| Accounts Payable | 3,000 | Plant | 8,000 |
| G. Watson (capital) | 10,000 | Bills Receivable | 4,000 |
| T. M. Green (capital) | 6,000 | Accounts Receivable | 2,500 |
| | | Merchandise | 10,500 |
| | | | |
| | <u>\$26,000</u> | | <u>\$26,000</u> |

The new Company uses the old firm's books. Make the necessary entries therein.

Answer.—As there are only a few shareholders we shall charge each one separately for his subscription and credit him for the payments made through the General Ledger. This is done by making the following entries:

| | |
|---------------------|----------|
| (a) G. Watson | \$12,000 |
| T. M. Green | 8,000 |

| | |
|-----------------------|----------|
| G. D. Blake | \$5,000 |
| J. J. Foster | 3,000 |
| G. E. Smith | 2,000 |
| W. E. Fowler | 1,000 |
| To Capital Stock..... | \$31,000 |

Stock subscribed as per Subscription Book.

| | |
|----------------------|---------|
| (b) Goodwill | \$4,000 |
| To G. Watson | \$2,000 |
| To T. M. Green | 2,000 |

Allowance to Watson and Green for Goodwill.

Watson and Green have turned over their business at an agreed price of \$20,000, in payment of which they accept shares; according to the Balance Sheet they already stand credited for \$10,000 and \$6,000 respectively; they are now credited for the additional \$4,000, which is given in consideration of the established reputation and connection of the business. This amount must be entered as Goodwill and will henceforth appear on the books of the Company as an Asset.

(c) The following entry must now be made in the Cash Book, crediting each subscriber for the Cash paid for his shares :

| | |
|-----------------------|----------|
| Cash | \$11,000 |
| To G. D. Blake | \$5,000 |
| To J. J. Foster | 3,000 |
| To G. E. Smith | 2,000 |
| To W. E. Fowler | 1,000 |

Cash received in payment of subscriptions.

The individual accounts of the different shareholders will balance after the three entries explained above have been posted. When the old ledger is used all accounts should be balanced at the date of taking over the business, carrying the balances forward and *re-heading* the accounts. Then write or stamp the name of the new Company on the left-hand side of the new heading. The balance sheet of the Company will then stand as follows :—

| LIABILITIES. | ASSETS. |
|------------------------------|---------------------------------|
| Capital Stock\$31,000 | Cash in bank\$12,000 |
| Bills Payable 7,000 | Plant 8,000 |
| Accounts Payable 3,000 | Bills Receivable 4,000 |
| | Merchandise 10,500 |
| | Accounts Receivable 2,500 |
| | Goodwill 4,000 |
| | |
| | |
| <u>\$41,000</u> | <u>\$41,000</u> |

Exam. Ques. 80. Show entries for the incorporation of the above-named Company if new books were opened instead of using the old ones.

Answer.—(a) Each of the shareholders would first be charged for the amount of his subscription:—

| | |
|------------------------|----------|
| G. Watson | \$12,000 |
| T. M. Green | 8,000 |
| G. D. Blake | 5,000 |
| J. J. Foster | 3,000 |
| G. E. Smith | 2,000 |
| W. E. Fowler | 1,000 |
| To Capital Stock | \$31,000 |

Stock subscribed as per Subscription Book.

(b) The firm of Watson and Green should be credited for the Assets turned over by them to the new Company and debited for the Liabilities assumed by the Company. The \$4,000 for Goodwill is included among the Assets; the difference will be the net amount to be paid the firm for their interest in the business, which they have agreed to take in Stock. One entry may be made as follows to cover both the Assets and Liabilities and show the net amount due Watson and Green:—

| | |
|---------------------------|---------|
| Cash | \$1,000 |
| Plant | 8,000 |
| Bills Receivable | 4,000 |
| Accounts Receivable | 2,500 |
| Merchandise | 10,500 |
| Goodwill | 4,000 |
| To Bills Payable | \$7,000 |
| " Accounts Payable | 3,000 |
| " Watson and Green | 20,000 |

Assets taken over and Liabilities assumed by the Company in taking over the business.

(c) The firm of Watson and Green having arranged that the stock would be allotted to them individually instead of as a firm, the following entry is made crediting each partner for his interest:—

| | |
|------------------------|----------|
| Watson and Green | \$20,000 |
| To G. Watson | \$12,000 |
| To T. M. Green | 8,000 |

Allotment of stock in settlement as per agreement.

(d) An entry must be made in the Cash Book crediting each subscriber for the Cash paid for his shares:—

| | |
|-----------------------|----------|
| Cash | \$11,000 |
| To G. D. Blake | \$5,000 |
| To J. J. Foster | 3,000 |

To G. E. Smith \$2,000

To W. E. Fowler 1,000

Payment in full of Shares allotted.

Exam. Ques. 81. In the event of entirely new books being used by the above Company, what entries would be required to properly close the books of the firm of Watson and Green?

Answer.—The firm received \$4,000 more for the business than the aggregate of the partners' capital accounts as shown by the Balance Sheet given in the question. Presumably they have been sharing Profits equally, as according to the terms of incorporation each receives half of this extra amount, which is a clear profit to the partners and represents the value of the Goodwill of the business. This has not yet appeared in the firm's books, but is brought into them by the following entry:—

Goodwill \$4,000

To G. Watson \$2,000

To T. M. Green 2,000

To credit each partner for half of the value of the Goodwill.

Entries should then be made as follows covering the sale of the business and settlement therefor:—

(1) Watson-Green Leather Co., Limited\$30,000

To Cash \$1,000

To Plant 8,000

To Bills Receivable 4,000

To Accounts Receivable 2,500

To Merchandise 10,500

To Goodwill 4,000

Assets transferred to Watson-Green Co. on taking over the business.

(2) Bills Payable \$7,000

Accounts Payable 3,000

To Watson-Green Leather Co., Limited\$10,000

Liabilities assumed by the Watson-Green Co. on taking over the business.

(3) Shares of Watson-Green Leather Co., stock...\$20,000

To Watson-Green Leather Co., Limited\$20,000

Shares received by the firm in settlement of the transfer of business as per agreement.

(4) G. Watson\$12,000

T. M. Green 8,000

To shares of Watson-Green Leather Co. stock...\$20,000

Shares allotted to Watson and Green respectively in settlement of their respective interests as shown by their capital accounts.

Ex. Ques. 82. C. R. Jones and J. W. Wilson are partners in the printing business, sharing gains and losses equally. Their affairs stand as follows:—

| ASSETS. | | LIABILITIES. | |
|---------------------------|----------|------------------------------|----------|
| Cash | \$2,000 | Bills Payable | \$6,000 |
| Plant | 10,000 | Creditors on open account.. | 2,000 |
| Bills Receivable | 3,400 | C. R. Jones (capital) | 6,900 |
| Merchandise | 600 | J. W. Wilson (capital) | 2,300 |
| Accounts Receivable | 1,200 | | |
| | <hr/> | | <hr/> |
| | \$17,200 | | \$17,200 |

They convert their business into a Joint Stock Company, incorporated with an Authorized Capital of \$25,000, under the name of the Hamilton Printing Co., Limited. The other subscribers are: D. Gray, \$5,000; R. Smith, \$4,000, and T. F. Wood, \$2,000, who pay cash in full of their subscriptions. It is agreed that the Plant be taken over at a valuation of \$8,500, the Merchandise at \$500, and the Notes and book Debts at 10 per cent. discount. Jones and Wilson take fully paid-up shares in settlement of their respective interests, cash being paid them in lieu of the fractional portion of a share. Make opening entries in the Company's new books.

Answer.—In dealing with this question, Plant and Merchandise should be entered up at exactly what they cost the Company. Bills Receivable and Book Debts are rarely ever considered worth 100 per cent., but nevertheless must appear in the books at their face value. The discount spoken of in the question is not deducted from the debit side of the several accounts, but is set aside as a "Reserve" against which to charge any losses that might occur from this source. It should not be entered to the credit of Profit and Loss, as that would make it appear that the Company had realized a profit equal to 10 per cent. of the face value of the Notes and Accounts Receivable, which is not necessarily the case. Such deductions from accounts or notes should always be considered as a Reserve to offset possible losses in realizing. It will be seen that the Assets, which are listed at \$17,200, bring only \$15,140, thus resulting in a loss of \$2,060 to the firm of Jones and Wilson. This being shared equally, reduces the capital of Jones to \$5,870, and the capital of Wilson to \$1,270. Jones will therefore get \$5,800 stock and \$70 cash, while Wilson will get \$1,200 stock and \$70 cash. The entries to be made are as follows, cash items passing through the Cash Book:—

| | |
|--|---------|
| (1) Cash | \$2,000 |
| Plant | 8,500 |
| Merchandise | 500 |
| Bills Receivable | 3,400 |
| Accounts Receivable (mentioned separately) | 1,200 |

| | |
|---|-------|
| To Reserve for Bad Debts | \$460 |
| To Bills Payable | 6,000 |
| To Creditors (mentioned separately) | 2,000 |
| To C. R. Jones | 5,870 |
| To J. W. Wilson | 1,270 |

Assets taken over and Liabilities assumed by new Company on taking over the business.

| | |
|------------------------|---------|
| (2) C. R. Jones | \$5,800 |
| J. W. Wilson | 1,200 |
| To Capital Stock | \$7,000 |

Shares allotted them re transfer of business.

| | |
|-----------------------|-------|
| (3) C. R. Jones | \$70 |
| J. W. Wilson | 70 |
| To Cash | \$140 |

Cash paid in lieu of fractional part of shares due them.

| | |
|------------------------|----------|
| (4) D. Gray | \$5,000 |
| R. Smith | 4,000 |
| T. F. Wood | 2,000 |
| To Capital Stock | \$11,000 |

Subscriptions per Stock book.

| | |
|---------------------|----------|
| (5) Cash | \$11,000 |
| To D. Gray | \$5,000 |
| To R. Smith | 4,000 |
| To T. F. Wood | 2,000 |

Payment in full of subscriptions.

Instead of opening accounts with Jones and Wilson as individuals, the entries affecting them might be passed through a firm account as follows :—

| | |
|---------------------------------------|----------|
| (1) Various Assets (separately) | \$15,600 |
| To Reserve for Bad Debts | \$460 |
| To Liabilities (separately) | 8,000 |
| To Jones and Wilson | 7,140 |

Assets taken over and Liabilities assumed in taking over the business of Jones and Wilson as per Agreement.

| | |
|----------------------------|---------|
| (2) Jones and Wilson | \$7,000 |
| To Capital Stock | \$7,000 |

Shares allotted as follows re transfer of business as per Agreement : C. R. Jones, 58 shares ; J. W. Wilson, 12 shares.

| | |
|----------------------------|-------|
| (3) Jones and Wilson | \$140 |
| To Cash | \$140 |

Cheques issued as follows in lieu of fractional portion of shares as per Agreement : C. R. Jones, \$70 ; J. W. Wilson, \$70.

Entries (4) and (5) would remain unchanged.

Ex. Ques. 83. A Joint Stock Company takes over as a going concern the business of R. Thompson. The purchase price agreed upon is \$500,000, payable as follows:—

2,500 shares of Common Stock of \$100 each;

1,250 shares of 6 per cent. Preference Stock of \$100 each;

Balance in Cash.

The Assets consist of Land and Buildings, \$80,000; Plant and Machinery, \$210,000; Stock-in-Trade, \$185,000; Accounts Receivable \$155,000; Bills Receivable, \$100,000. The Liabilities are: Accounts Payable, \$135,000, and Bills Payable, \$95,000. Make the necessary entries in Journal form to record the transaction in the financial books of the Company.

Answer.—The following are the Journal entries required:—

| | |
|------------------------------|-----------|
| (1) Land and Buildings | \$80,000 |
| Plant and Machinery | 210,000 |
| Stock-in-Trade | 185,000 |
| Accounts Receivable | 155,000 |
| Bills Receivable | 100,000 |
| To Accounts Payable | \$135,000 |
| To Bills Payable | 95,000 |
| To R. Thompson | 500,000 |

Assets and Liabilities taken over from R. Thompson under Agreement of this date transferring his business to the Company. See Minute Book, page 5.

| | |
|---|-----------|
| R. Thompson | \$500,000 |
| To Capital Stock (Common) | \$250,000 |
| To Capital Stock (6 per cent. Preference) | 125,000 |
| To Cash | 125,000 |

Issue of 2,500 shares of Common Stock, 1,250 shares of 6% Preference Stock and payment of \$125,000 cash in full settlement of transfer of business of R. Thompson as per Agreement. See Minute Book, page 5.

Ex. Ques. 84. If in the foregoing question the consideration for the transfer of the business had been \$525,000, consisting of 2,750 shares of Common Stock, 1,250 shares of 6 per cent. Preference, and \$125,000 Cash, what entries would have been made?

Answer.—The additional \$25,000 paid for the business over and above its Net Assets would be charged to Goodwill and credited to R. Thompson in entry No. 1, while in entry No. 2 Thompson would be charged and Capital Stock (common) credited with the extra \$25,000 stock issued. The entries would then appear as follows:—

| | |
|------------------------------|----------|
| (1) Land and Buildings | \$80,000 |
| Plant and Machinery | 210,000 |
| Stock-in-Trade | 185,000 |
| Accounts Receivable | 155,000 |

| | |
|---------------------------|-----------|
| Bills Receivable | \$100,000 |
| Goodwill | 25,000 |
| To Accounts Payable | \$135,000 |
| To Bills Payable | 90,000 |
| To R. Thompson | 525,000 |

Day Book explanation here.

| | |
|---|-----------|
| (2) R. Thompson | \$525,000 |
| To Capital Stock (Common) | \$275,000 |
| To Capital Stock (6 per cent. Preference) | 125,000 |
| To Cash | 125,000 |

Day Book explanation here.

Ex. Ques. 85. What entry would have been made if the consideration for the transfer of the business had been 2,500 shares of Common Stock, 1,250 shares of 6 per cent. Preference, and \$110,000 Cash?

Answer.—In that event the Company would have purchased Net Assets of \$500,000, for which they would have to pay only \$485,000, thus making \$15,000 on the transfer. This \$15,000 should be credited to the Reserve Account, not to Profit and Loss. To credit it to the latter account would give a false idea of the profit-earning power of the business when the annual statements were prepared.

| | |
|------------------------------|-----------|
| (1) Land and Buildings | \$80,000 |
| Plant and Machinery | 210,000 |
| Stock-in-Trade | 185,000 |
| Accounts Receivable | 155,000 |
| Bills Receivable | 100,000 |
| To Accounts Payable | \$135,000 |
| To Bills Payable | 95,000 |
| To R. Thompson | 485,000 |
| To Reserve | 15,000 |

Day Book explanation here.

| | |
|---|-----------|
| (2) R. Thompson | \$485,000 |
| To Capital Stock (Common) | \$250,000 |
| To Capital Stock (6 per cent. Preference) | 125,000 |
| To Cash | 110,000 |

Day Book explanation here.

Examination Questions.

86. The St. Catharines Wine Co. is organized with an Authorized Capital of \$75,000, divided into 750 shares of \$100 each, to purchase and carry on the business heretofore conducted by Jos. Miller and Wm. Smith under the firm name Miller and Smith. By the terms of the Agreement

between the Company and the firm the latter are to receive fully paid-up stock for the business, which is valued at \$30,000, as per attached balance sheet :—

| LIABILITIES. | | ASSETS. | |
|---------------------------|---------|------------------------|----------|
| Bills Payable | \$8,600 | Plant | \$19,000 |
| Sundry Creditors | 1,000 | Merchandise | 11,600 |
| J. Miller (capital) | 15,000 | Sundry Debtors | 2,000 |
| Wm. Smith (capital) | 15,000 | Bills Receivable | 7,000 |
| <hr/> | | <hr/> | |
| \$39,600 | | \$39,600 | |
| <hr/> | | <hr/> | |

Make necessary Journal entries for the transaction providing the same books of account are to be used as previous to incorporation.

87. Make entries required provided entirely new books are to be used.

88. Make entries required in Company's new books, provided Miller and Smith had agreed to transfer the business for \$26,000 stock.

89. Make entries required in above books if Miller and Smith had received \$35,000 stock for the business.

90. Make entries necessary to close the old books of Miller and Smith provided the sale had been made on the terms stated in question 86.

91. A new company is being formed. The promoters invite subscriptions for \$100,000 worth of Preference Stock, shares being \$100 each. Applications are received for the following amounts :—

| | |
|---------|----------|
| A. | \$15,000 |
| B. | 1,000 |
| C. | 3,000 |
| D. | 4,000 |
| E. | 44,000 |
| F. | 54,000 |
| G. | 3,000 |
| H. | 1,000 |

The directors decide to allot \$75,000 pro rata (as nearly as possible) among applicants for amounts exceeding \$4,000, and the remainder of the issue pro rata (as nearly as possible) among all the applicants.

(a) Apportion these shares.

(b) Write up minutes of meeting.

(c) Rule and write up Allotment Book.

(d) Give form advising each applicant of result of application.

92. A Joint Stock Company is formed with capital of \$100,000. It is decided to accept A's offer of his business for \$50,000, half payable in shares, \$10,000 in cash, and the balance by note at six months without interest. B, C, D and E each subscribe for \$6,000 worth of shares, paying cash for same. Record these entries in your books and show Ledger accounts. Show also the Stock or Share Ledger accounts. The item, \$50,000 for A's business, can be subdivided into say six items, when entering in books.

CHAPTER IX.

TREASURY STOCK.

Treasury Stock. Companies organized for the purpose of purchasing a Mine or Patent Rights frequently make with the vendors agreements of such a nature that all, or at least a large part, of the Authorized Capital of the Company is exhausted in satisfying the terms of the purchase. Under such circumstances it is customary for the shareholders to donate pro rata to the Company a specified number of shares to be put on the market to be sold to provide funds for development purposes. Stock donated in this manner is called Treasury Stock, and it may be sold by the company at any price obtainable without violating the requirements of the Act under which it may have been incorporated. In connection with the organization of nearly all such companies there are private agreements providing for the payment to those co-operating with the actual vendors of a certain proportion of the exorbitant prices usually paid for mines or patents. The entries resulting from such transactions appear in the problems which follow.

Ex. Ques. 93. A Company was organized for the purpose of purchasing certain Patents and establishing a factory in connection therewith. The Patents were owned by William Black, who, in conjunction with Thomas Moody, Samuel Miller, James Watson and Robert White, obtained incorporation under the Ontario Companies Act with an authorized capital of \$500,000 divided into 5,000 shares of \$100 each. A private preliminary agreement had been executed by the aforesaid persons covering the following points: (1) Moody, Miller, Watson and White were to subscribe and pay cash for 100 shares each at par; (2) the remaining 4,600 shares were to be issued as fully paid-up to Black in settlement of the purchase price of the patent, on the understanding that 600

shares were to be transferred to each of the other four incorporators; (3) each of the shareholders was then to donate 200 shares of his stock to the Company to be sold to provide cash for development purposes. After the Company had been incorporated the directors met and executed the agreement with Black for the sale of the Patents for 4,600 shares of fully paid-up stock, cash was received in due course from the other incorporators in payment of their subscriptions, and transfers were made in accordance with the private agreement. Make entries in financial books and explain Stock Ledger entries.

Answer.—The Journal will contain the following entries :—

| | |
|------------------------|-----------|
| (1) Wm. Black | \$460,000 |
| Thos. Moody | 10,000 |
| Saml. Miller | 10,000 |
| Jas. Watson | 10,000 |
| Robt. White | 10,000 |
| To Capital Stock | \$500,000 |

Stock allotment as per Directors' Minute Book, page 4.

| | |
|--------------------|-----------|
| (2) Patents | \$460,000 |
| To Wm. Black | \$460,000 |

Purchase price of Patents bought from Wm. Black as per Agreement, Nov. 3, 1906. See Directors' Minute Book, page 4.

| | |
|--------------------------|-----------|
| (3) Treasury Stock | \$100,000 |
| To Working Capital | \$100,000 |

For 1,000 shares stock donated to the Company by the shareholders. Moody, Miller, Watson and White would then be credited through the Cash book with their respective payments of \$10,000 each.

The first entries in the Stock Ledger would be made from the Stock Certificate Book and would show the incorporators credited for paid-up shares as follows :—

| | |
|---------------------|---------------|
| Wm. Black | 4,600 shares. |
| Thos. Moody | 100 " |
| Samuel Miller | 100 " |
| Jas. Watson | 100 " |
| Robt. White | 100 " |

In accordance with the private agreement, Black would then transfer 600 shares to each of the other four members of the Company, the entries passing through the Transfer Book and Transfer Register in the regular way. There would be nothing in the books to indicate in any way whether Black received any consideration for the transfer or not. After the transfers had been posted to the Stock Ledger the accounts therein would stand as follows :—

| | |
|-------------------|---------------|
| Wm. Black | 2,200 shares. |
| Thos. Moody | 700 " |

| | |
|---------------------|------------|
| Samuel Miller | 700 shares |
| Jas. Watson | 700 " |
| Robt. White | 700 " |

Then follows the donation of two hundred shares by each shareholder to the Company. This would be carried into effect by the transfer being made to a Trustee, who would hold the shares on behalf of the Company. An account would be opened for the Trustee in the Stock Ledger, into which the transferred shares would be entered in the regular manner. The stock holdings as shown by the books would then be:—

| | |
|--------------------------------|---------------|
| Wm. Black | 2,000 shares. |
| Thos. Moody | 500 " |
| Samuel Miller | 500 " |
| Jas. Watson | 500 " |
| Robt. White | 500 " |
| Trustee (treasury stock) | 1,000 " |

Ex. Ques. 94. Three hundred shares of the aforesaid Treasury Stock were sold at \$60 per share. What entries would be made?

Answer.—When the above stock was donated by the Company, Treasury Stock was debited for the par value of the stock. When it is sold Treasury Stock must be credited for the par value in order that the Ledger Account of that name may show the correct amount of Treasury Stock unsold at any time. As Working Capital was credited for the full par value of the stock when it was taken over, it is clear that any depreciation in realizing should be charged against this amount; similarly if a premium were received Working Capital would be credited for the amount of it. The answer to the question would be as follows:—

| | |
|---|----------|
| (1) Subscribed | \$18,000 |
| Working Capital | 12,000 |
| To Treasury Stock | \$30,000 |
| 300 shares treasury stock sold at \$60 per share. | |
| (2) Cash | \$18,000 |
| To Subscribers | \$18,000 |

Above entry would be made in cash book, crediting subscribers for the cash received in settlement.

Ex. Ques. 95. On the books of the Eldorado Mining Company (kept by single entry) the following balances are found:—

DEBITS.

| | |
|---|----------------|
| Mine | \$1,500,000.00 |
| Treasury Stock | 230,000.00 |
| Development or Constructive Expense | 180,000.00 |

| | |
|---------------------------|-------------|
| Promotion Expense | \$70,000.00 |
| Plant | 15,000.00 |
| Buildings | 10,000.00 |
| Cash | 5,000.00 |
| Accounts Receivable | 16,895.50 |

CREDITS.

| | |
|------------------------|----------------|
| Capital Stock | \$1,500,000.00 |
| Accounts Payable | 24,956.75 |

On Treasury Stock account the original debit was \$500,000, and there is a notation that this stock was all disposed of—\$200,000 cash being received for \$430,000 of shares, and \$70,000 of shares being delivered as payment for services in promoting the Company.

It is now desired to keep the books by double entry. Make the necessary Journal entries and criticize the item of "Treasury Stock" expressing an opinion as to your understanding of the term.

Answer.—Treasury Stock in the accounts of a Mining Company almost invariably means fully paid-up stock that has been issued as part payment of the mine and has subsequently been donated to the Company for the purpose of reselling it to provide funds for development purposes. In the case before us we are told that \$500,000 was the original amount of Treasury Stock, in other words that the Company had received as a gift from its shareholders shares amounting to \$500,000. We are also told that an entry was made debiting Treasury Stock for this \$500,000. If the books had been kept by Double Entry an account called "Working Capital," "Development Capital" or "Reserve Account" would have been opened and credited for the same amount, thus:—

| | |
|--------------------------|-----------|
| Treasury Stock | \$500,000 |
| To Working Capital | \$500,000 |

When the shares of this Treasury Stock were sold or disposed of in any way Treasury Stock account should have been credited with the face value of the shares sold. If less than par be received it should be charged against the account which was credited when the stock was donated. For instance, we are told that \$430,000 Stock was sold for \$200,000 cash; by double entry the following would have been the record:—

| | |
|-------------------------|-----------|
| Cash | \$200,000 |
| Working Capital | 230,000 |
| To Treasury Stock | \$430,000 |

The remaining \$70,000 has evidently been correctly entered up as follows:—

| | |
|-------------------------|----------|
| Promotion Expense | \$70,000 |
| To Treasury Stock | \$70,000 |

The foregoing entries when posted would balance Treasury Stock account, which should no longer appear on the books. Whether kept by Single Entry or Double Entry, the result should be the same in regard to Treasury Stock; it is quite evident that this account was credited only for \$200,000 instead of \$430,000 at the time of the Cash Sale, thus leaving an incorrect debit balance of \$230,000 which we must get rid of, as it has the appearance of an asset, whereas no such asset exists. This can be rectified by crediting Treasury Stock for \$230,000 in Single Entry form, giving an explanation to the effect that this account should have been credited for \$430,000 instead of \$200,000 at the time of making the sale. This would leave debits amounting to \$1,796,895.50 and credits amounting to \$1,524,956.75, but in Double Entry the debits must equal the credits; it is therefore necessary to credit some account for the extra \$271,938.75, and in the absence of further information it may be put to the credit of Reserve or Working Capital. In changing a set of books from Single Entry to Double, a Journal entry containing the complete debits and credits should be made and such as are already in the Ledger "ticked," the others being posted in the regular way. The following Journal entry will effect the required change, presuming an entry to have already been made balancing Treasury Stock as explained above:—

| | |
|---------------------------|----------------|
| Mine | \$1,500,000.00 |
| Development Expense | 180,000.00 |
| Plant | 15,000.00 |
| Promotion Expense | 70,000.00 |
| Buildings | 10,000.00 |
| Cash | 5,000.00 |
| Accounts Receivable | 16,895.50 |
| To Capital Stock | \$1,500,000.00 |
| To Reserve Account | 271,938.75 |
| To Accounts Payable | 24,956.75 |

As all of the above items are already in the Ledger except Reserve account, this is the only one to be posted; when that is done the books will be in Double Entry form with debits and credits as shown in the above entry.

Treasury Stock sometimes means that part of the Authorized Capital of a Company which has not yet been issued, but it is clear that this is not the meaning in the case stated in the above question.

Examination Questions.

96. L. Woods is the owner of certain Sewing Machine Patents and has induced four capitalists to join him in forming a company to manu-

facture the machine. Before incorporating the company each of them pays Woods \$500 cash and thereby obtains a one-fifth interest in the Patents. They sell the Patents for \$200,000 fully paid-up stock to the newly-organized company, which has an Authorized Capital of \$250,000 in shares of \$100 each. It is decided not to issue the remaining \$50,000 stock at present, but in order to provide a Working Capital each of the five incorporators donates \$12,000 stock to the company. Thirty shares of this is sold at \$95 per share, and fifty shares at \$110 per share, the rest remaining unsold. Make Journal entries for the above, post to Ledger and take off a Trial Balance.

97. Prepare a Share Ledger showing the holdings of L. Woods.

98. Explain how the \$60,000 stock donated by the shareholders is handled in the Share Ledger.

CHAPTER X.

DISCOUNT OR PREMIUM ON SHARES.

Issuing Shares at a Discount. The Dominion Act refers briefly to the issue of stock at a discount or premium in section 25, clause 2, which reads as follows: "No by-law for the issue, allotment or sale of any portion of the unissued stock at any greater discount or at any less premium than that which has been previously authorized at a general meeting, and no by-law for the remuneration of the President or any director shall be ing." The Ontario Act permits shares in mining companies to be issued at a discount under certain restrictions.

Ex. Ques. 99. The Georgian Bay Mining Company, Limited, is incorporated under the Ontario Mining Companies' Incorporation Act with an Authorized Capital of \$500,000, divided into 500,000 shares of \$1 each. The incorporators receive 200,000 of these shares in payment for their mining property; the rest of them are sold at a discount of 40 per cent. Make Journal entries.

Answer.—An account called "Share Discount" should be opened and charged with the 40 per cent. discount on the shares issued at that price. This account should be dealt with in much the same way as "Goodwill," with this difference, that in the Balance Sheet the "Share Discount" should be shown deducted from the Capital Account instead of treating it as an Asset; in this way both the nominal and the true capital is shown. If it be decided to write off "Share Discount" it should be kept distinct from the business Profits or Losses of the period and spread over a number of years in the same manner as "Preliminary Expense" as described on page 54. The following entries are required by the question:—

| | |
|---------------------------|-----------|
| (1) Mining Property | \$200,000 |
| To Capital Stock | \$200,000 |

For shares issued in payment of Mining Property as per Directors' Minute Book, page 5.

| | |
|------------------------|-----------|
| (2) Cash | \$180,000 |
| Share Discount | 120,000 |
| To Capital Stock | \$300,000 |

For sale of shares at 60 cents each as per by-law No. 25. The stockholders would be credited in the Share Ledger for the par value of the shares in the usual way.

Ex. Ques. 100. The shareholders of the above company donate 10 per cent. of their share holdings to be re-sold to provide funds for special development purposes. Make Journal entry.

Answer.—Treasury Stock. Stock donated to a company in this manner is called Treasury Stock and should be debited with the face value

of the stock when donated and credited with the par value of the shares subsequently sold. An account called "Development Capital" or "Working Capital" should be opened for the purpose of keeping a correct record of the income and expenditure of funds thus raised. The Journal entry is :

| | |
|--------------------------|----------|
| Treasury Stock | \$50,000 |
| To Working Capital | \$50,000 |

For donation of 50,000 shares by stockholders.

In the Stock Ledger each shareholder's account would be charged with a transfer equal to 10 per cent. of the stock held by him and a new account styled "Treasury Stock" would receive credit for these several amounts.

Ex. Ques. 101. Forty thousand shares of the above Treasury Stock were sold at 45 cents per share. Make entry.

Answer.—In this case the discount on shares would not be charged to the Share Discount account, but to "Working Capital," which, previous to the sale, stood credited with the entire par value of the shares donated.

| | |
|-------------------------|----------|
| Cash | \$18,000 |
| Working Capital | 22,000 |
| To Treasury Stock | \$40,000 |

This entry when posted will show that \$10,000 Treasury Stock still remains unsold and that Working Capital has been reduced from \$50,000 to \$28,000, of which \$18,000 is Cash and \$10,000 Treasury Stock. The transfers would be made in the Stock Ledger from Treasury Stock account in the same manner as from any shareholder's account.

Issuing Shares at a Premium. Shares are not infrequently issued at a Premium instead of at Par or at a Discount. Particularly is this the case in the incorporation of a bank or other financial institution which may be desirous of at once putting the concern on a sound foundation by the creation of a large Reserve from the premiums thus obtained. When subscriptions are payable in instalments the first monies received are apportioned to Share Premium account, so that the subscriber would not receive any credit in the Share Ledger for stock payments until after the Premium had been fully paid. For instance, if the \$100 shares of a certain concern are issued at 50 per cent. premium and made payable in two instalments of \$75 each, entries should be made as follows :—

| | |
|------------------------|---------|
| (1) Shareholders | \$75.00 |
| To Share Premium | \$50.00 |
| To Capital Stock | 25.00 |

For first instalment on shares allotted at 50 per cent. premium as per Director's Minute Book, page 6.

| | |
|-------------------------------|---------|
| (2) Cash (in Cash Book) | \$75.00 |
| To Shareholders | \$75.00 |

Payment of first instalment on shares.

Then on the date for the payment of the second instalment make entries as follows :—

| | |
|------------------------|---------|
| (1) Shareholders | \$75.00 |
| To Capital Stock | \$75.00 |

For second instalment on shares allotted at 50 per cent. premium.

| | |
|------------------------------|---------|
| (2) Cash (in Cash Book)..... | \$75.00 |
| To Shareholders | \$75.00 |

Payment for second instalment on shares.

If preferred instead of handling as above, an account for each instalment may be opened immediately after allotment as described on page 50. Profits realized in marketing the company's shares should be kept entirely apart from the ordinary profits of the business, although they may be used for dividend purposes if the directors see fit to do so. Share Premium account should either be left open and treated as a liability in the same sense as Capital Stock, or be closed into Reserve account.

Examination Questions.

102. The Sudbury Mining Company is organized with an Authorized Capital of \$600,000, divided into 2,400,000 shares of 25 cents each. The incorporators receive \$350,000 fully paid-up shares in settlement of several mining properties transferred to the company. Of the remaining shares, 400,000 are sold at 18 cents per share, 200,000 at 16 cents, and the rest at 14 cents Cash. Additional funds being subsequently required for development purposes, the shareholders donated pro rata 20 per cent. of their stock to the company to be sold for this purpose. Of these shares 300,000 were sold at 12 cents each, 100,000 at 11 cents each, and the remainder at 9 cents. Make necessary Journal entries and in order to show your method of dealing with Treasury Stock in the Share Ledger, write up this account in that book.

103. If 50,000 shares of mining stock (par value 25 cents) were issued at thirty cents per share, what entry would be made?

104. State briefly the conditions under which mining stock may be issued at a discount under the Ontario Companies' Act.

105. Explain how you would deal with "Share Discount" or "Share Premium" in the Annual Financial Statements.

CHAPTER XI.

INCREASE OR DECREASE OF CAPITAL STOCK.

Increase of Capital Stock. No bookkeeping entries are necessary for an increase of Authorized Capital, except when a special account is kept for Unsubscribed Stock, in which case this account would be debited and Capital Stock credited for the amount of the increase. Whenever new stock is issued, however, entries must be made dealing with the new subscriptions in the same manner as the original subscriptions have been dealt with.

Decrease of Capital Stock. As a rule the Capital Stock of a company is decreased only after the real value of the shares has been brought considerably below par by a series of heavy losses. The result of the decrease is a profit to the company for the amount of the reduction, the bookkeeping entries in connection with which are explained in the answer to the exercise given below.

Ex. Ques. 106. A company having a Paid-up Capital of \$300,000 and a balance on the debit side of Profit and Loss account amounting to \$80,000 passed a by-law to decrease the capital stock to \$200,000. What entries should be made?

Ans.—The amount at the credit of Capital Stock account is to be reduced by \$100,000. The change is made in the books by debiting Capital Stock and crediting Reserve for this amount. The Profit and Loss account should then be closed into Reserve.

| | |
|-------------------------|-----------|
| (1) Capital Stock | \$100,000 |
| To Reserve | \$100,000 |

For reduction of Capital Stock authorized by Supplementary Letters Patent issued to-day.

| | |
|--------------------------|----------|
| (2) Reserve | \$80,000 |
| To Profit and Loss | \$80,000 |

To close Profit and Loss account.

These entries when posted will leave Capital Stock credited with \$200,000 and Reserve with a credit balance of \$20,000, which should put the shares of the company in a thoroughly healthy condition. The old certificates held by the shareholders should be returned to the company and new ones for the decreased amounts issued in place thereof. In the Stock Ledger each shareholder will be charged pro rata with his part of the stock reduction.

Examination Questions.

107 The Directors of a Company incorporated under the Ontario Companies' Act have passed a by-law to increase the capital of the company by issue of Preference Stock. Describe the procedure for doing so. Draw up this by-law (or by-laws) and make provision that the shares to be issued shall be preferred not only for dividend but as regards capital.

108. When and how may a company, incorporated under the Ontario Companies' Act, decrease its Capital Stock?

109. An amalgamation of three companies is proposed with a capital of \$3,000,000 and a reserve of \$750,000. The original capital of the three companies and their respective assets is as follows:—

| | | | | |
|----|--------------|--------------|-----------------------|------------|
| A. | Capital..... | \$2,000,000. | Assets valued at..... | \$1,750.00 |
| B. | “ | 1,000,000. | “ “ | 750.00 |
| C. | “ | 1,250,000. | “ “ | 1,250.00 |

It is proposed to form the reserve by taking 20 per cent. of the net assets of the three companies. What would a shareholder having \$1,000 worth of stock in each of the old companies get in the new company?

110. A company having a fully paid-up capital of \$100,000 has \$25,000 at the debit of its Profit and Loss account. It is decided to reduce the Capital Stock to \$50,000. Explain procedure and make entries.

CHAPTER XII.

AMALGAMATION AND RECONSTRUCTION OF COMPANIES.

Amalgamation of Companies. During the past few years there has been not only an unprecedented increase in the number of companies incorporated, but a growing tendency on the part of those companies to afterwards unite their forces by amalgamating under one corporate name. As it is important that the student should know the procedure governing such amalgamations, he should at once read section 8 of the Ontario Companies' Act, which deals with the matter.

Ex. Ques. 111. The Macpherson Company, Limited, and the Martin Company, Limited, amalgamate under the name of the Macpherson-Martin Company, Limited, with an Authorized Capital of \$500,000, of which \$200,000 is 7 per cent. Preference Stock and the remaining \$300,000 Common Stock. It is agreed that \$100,000 Preference Stock and \$200,000 Common Stock shall be given for the Macpherson Company's business and \$75,000 Preference Stock and \$75,000 Common Stock for the Martin Company's business. It is also agreed that \$3,000 Common Stock be allotted to A. Macpherson in consideration of his services in connection with the amalgamation. From the following Balance Sheets make the required entries in the books of the new company:—

BALANCE SHEET OF THE MACPHERSON COMPANY, LIMITED.

| LIABILITIES. | | ASSETS. | |
|-----------------------|------------------|-----------------------|------------------|
| Bills Payable..... | \$ 8,000 | Cash..... | \$ 3,000 |
| Mortgage Payable..... | 12,000 | Book Debts..... | 5,000 |
| Accounts Payable..... | 2,000 | Bills Receivable..... | 20,000 |
| Capital Stock..... | 250,000 | Goods on hand..... | 80,000 |
| | | Machinery, etc..... | 60,000 |
| | | Real Estate..... | 104,000 |
| | <u>\$272,000</u> | | <u>\$272,000</u> |

BALANCE SHEET OF THE MARTIN COMPANY, LIMITED.

| LIABILITIES. | | ASSETS. | |
|--------------------|------------------|-----------------------|------------------|
| Bills Payable..... | \$ 8,000 | Cash..... | \$ 2,000 |
| Capital Stock..... | 100,000 | Book Debts..... | 5,000 |
| | | Bills Receivable..... | 15,000 |
| | | Machinery, etc..... | 56,000 |
| | | Goods on hand..... | 30,000 |
| | <u>\$108,000</u> | | <u>\$108,000</u> |

Ans.—(a) The net assets of the Macpherson Company are shown by its Balance Sheet to amount to \$250,000. They are to transfer these Assets for \$300,000 Stock consisting of \$100,000 Preference and \$200,000 Common. The extra \$50,000 Stock issued in excess of the Net Assets must be charged to Goodwill. Enter as follows:—

| | | |
|---------------------------------|---------|---------|
| (1) Cash | \$3,000 | |
| Book Debts | 5,000 | |
| Bills Receivable | 20,000 | |
| Merchandise | 80,000 | |
| Machinery | 60,000 | |
| Real Estate | 104,000 | |
| Goodwill | 50,000 | |
| To Bills Payable | | \$8,000 |
| To Mortgage Payable | | 12,000 |
| To Accounts Payable | | 2,000 |
| To Macpherson Co., Limited..... | | 300,000 |

Assets and liabilities of the Macpherson Co., Limited, taken over as per agreement of Jan. 15, 1907.

| | |
|-------------------------------------|-----------|
| (2) Macpherson Co., Limited | \$300,000 |
| To Capital Stock (Preference) | \$100,000 |
| To Capital Stock (Common) | 200,000 |

Stock issued to shareholders of Macpherson Co., Limited.

It will be noticed that the Capital Stock Account has been entered in such a way as to keep Preference Stock and Common Stock distinct. Similarly in the Share Ledger separate accounts must be opened for Preference Shareholders as distinguished from holders of Common Stock.

(b) To bring the Martin Company business into the books, make the following entries:—

| | | |
|------------------------------|---------|---------|
| (1) Cash | \$2,000 | |
| Book Debts | 5,000 | |
| Bills Receivable | 15,000 | |
| Machinery | 56,000 | |
| Merchandise | 30,000 | |
| Goodwill | 50,000 | |
| To Bills Payable | | \$8,000 |
| To Martin Co., Limited | | 150,000 |

Assets and liabilities of Martin Co., Limited, taken over as per agreement.

| | |
|-------------------------------------|-----------|
| (2) Martin Co., Limited | \$150,000 |
| To Capital Stock (Preference) | \$75,000 |
| To Capital Stock (Common) | 75,000 |

Stock issued to shareholders of Martin Co., Limited, in accordance with the agreement.

(c) This Common Stock, amounting to \$3,000, is issued to A. Macpherson in consideration of his services in bringing about the amalgamation. Preliminary Expense should be charged with this and may be carried temporarily as an Asset, but if this is done it should be written down gradually so as to disappear entirely by the end of from three to five years. Enter as follows:

| | |
|---------------------------------|---------|
| Preliminary Expense | \$3,000 |
| To Capital Stock (Common) | \$3,000 |

After all of the foregoing entries have been posted the accounts opened for the Macpherson Company and the Martin Company should balance. Stock certificates of the new company would be issued to the shareholders of these respective concerns in proportion to their interests in the same, in place of the shares previously held by them, which are now surrendered. The opening Balance Sheet of the Macpherson-Martin Company, Limited, will be as follows:—

BALANCE SHEET OF THE MACPHERSON-MARTIN COMPANY, LIMITED.

| LIABILITIES. | | ASSETS. | |
|-------------------------------|------------------|----------------------------|------------------|
| Bills Payable | \$16,000 | Cash | \$5,000 |
| Mortgage Payable | 12,000 | Book Debts | 10,000 |
| Accounts Payable | 2,000 | Bills Receivable | 35,000 |
| Capital Stock (Preference) .. | 175,000 | Merchandise | 110,000 |
| Capital Stock (Common)... | 278,000 | Machinery | 116,000 |
| | | Real Estate | 104,000 |
| | | Goodwill | 100,000 |
| | | Preliminary Expenses | 3,000 |
| | | | |
| | <u>\$483,000</u> | | <u>\$483,000</u> |

Absorption of One Company by Another. One undertaking is frequently absorbed by another, not by a legal amalgamation of the companies, but by the purchase of the selling company's shares from its shareholders. This is illustrated in the problem explained below.

Ex. Ques. 112. Company A. buys the business of Company B, both being Joint Stock Companies. Company B. calls a meeting of its shareholders, who agree to sell all their shares, aggregating \$25,000, to Company A. or their trustees for \$20,000; Company B.'s present shareholders to keep all book debts; Company A. to pay all liabilities, which are to be deducted from said \$20,000.

Following is the statement of B. Company after taking out book debts, as arranged :—

| LIABILITIES. | | ASSETS. | |
|---------------------|---------|-----------------------------|----------|
| Book Debts | \$5,000 | Merchandise | \$18,000 |
| Bills Payable | 5,000 | Machinery, plant, etc. | 10,000 |

The business of Company B. is continued, and new books opened in its own name, and the Manager received from Company A. \$20,000 to be used as follows :—

\$10,000 to go to the shareholders of Company B. in full payment for Shares, \$5,000 to pay Book Debts, and \$5,000 to pay Bills Payable.

(a) Show above transactions as recorded in Company A.'s books.

(b) Show entries in Company B.'s new books.

Ans.—(a) To Company A. this is simply an investment; the fact that the whole of the shares of Company B. have been bought by Company A. does not constitute an amalgamation of the companies. Each conducts its business separately as before, and the Capital Stock of each remains the same. Company A. pays \$20,000 Cash for \$25,000 Company B. stock. The following entry passed through the Cash Book, with an explanatory reference to the agreement, would be the only one necessary in Company A.'s books :—

| | |
|---------------------------|--------------|
| Shares in Company B. | Dr. \$20,000 |
| To Cash | \$20,000 |

(b) We will assume that Company B.'s new books are opened immediately after the agreement has been made between the two companies, and before the \$20,000 cash has been paid over by Company A. As, under the agreement, Company A. is to pay off all Company B.'s existing liabilities, it is clear that Company B., under its new conditions, starts off with \$28,000 Net Assets, whereas its Capital Stock only amounts to \$25,000. This leaves a credit balance of \$3,000, which is carried to Reserve Fund account as shown in the following opening entry :—

| | |
|------------------------|----------|
| Mdse. | \$18,000 |
| Machinery | 10,000 |
| To Capital Stock | \$25,000 |
| To Reserve Fund | 3,000 |

Next make the entry charging Company A. with the \$20,000 agreed upon, and crediting the accounts to which payment thereof is to be applied :—

| | |
|--------------------------|----------|
| Company A. | \$20,000 |
| To Book Debts | \$5,000 |
| To Bills Payable | 5,000 |
| To B. Shareholders | 10,000 |

Then follows the entry for the \$20,000 cash received from Company A. :—

| | |
|--------------------|----------|
| Cash | \$20,000 |
| To Company A. | \$20,000 |

When the \$10,000 is paid out to Company B. shareholders, charge them and credit Cash; similarly, when the Book Debts and Bills Payable are paid, these accounts will be debited. The entries made for the distribution of the full \$20,000 result as follows :—

| | |
|-----------------------|----------|
| B. Shareholders | \$10,000 |
| Book Debts | 5,000 |
| Bills Payable | 5,000 |
| To Cash | \$20,000 |

When these entries have all been posted, the Ledger will balance with the exception of the accounts shown in the first entry, which really contains the Balance Sheet of the company, as may be seen by comparing it with the following, which is supposed to have been made after the \$20,000 had been distributed to the proper parties :—

BALANCE SHEET, COMPANY B.

| LIABILITIES. | ASSETS. |
|-----------------------------|---------------------------|
| Capital Stock\$25,000 | Merchandise\$18,000 |
| Reserve Fund 3,000 | Machinery 10,000 |
| <hr/> | <hr/> |
| \$28,000 | \$28,000 |
| <hr/> | <hr/> |

Reconstruction by Liquidation. In the following illustration the selling company through a liquidator disposes of its assets to the purchasing company, which gives in settlement cash to pay liabilities and paid-up shares in the purchasing company for the balance.

Ex. Ques. 113 The Balance Sheet of the Harrison Plough Co., Limited, on October 31, 1906, stood as follows :—

| LIABILITIES. | | ASSETS. | |
|---------------------|------------------|------------------------|------------------|
| Capital Stock | \$100,000 | Factory Premises | \$75,000 |
| Creditors | 12,500 | Machinery | 11,500 |
| | | Stock-in-Trade | 6,000 |
| | | Profit and Loss | 20,000 |
| | | | |
| | <u>\$112,500</u> | | <u>\$112,500</u> |

On this date the company decides to wind up and a liquidator is appointed who effects an arrangement with the Morris Mfg. Co., Limited, by which the latter takes over all of the assets of the Harrison Co. for \$60,000, payable \$15,000 Cash and \$45,000 Paid-up Shares in the purchasing company. The cash received is used to pay the liquidation expenses, which amount to \$2,500, and the creditors as per Balance Sheet.

(a) Make entries in the books of the Morris Mfg. Co., Limited.

(b) Make entries closing the books of the Harrison Plough Co., Limited.

Ans.—(a) Assets amounting to \$92,500 on the Harrison Co. Balance Sheet are bought by the Morris Co. for \$60,000. They take Machinery and Stock-in-Trade into the books at listed prices and Factory Premises at \$42,500, the balance of the purchase price. In Journal form the Morris Co. entries would therefore be as follows:—

(1) Factory Premises\$42,500
 Machinery 11,500
 Stock-in-trade 6,000

To Liquidator of Harrison Plough Co.\$60,000

Purchase price of assets of Harrison Co. as per agreement dated Nov. 21, 1906.

(2) Liquidator of Harrison Plough Co.\$60,000

To Cash\$15,000

To Capital Stock \$45,000

Paid above cash and issued 450 shares fully paid-up stock in settlement of purchase of Harrison Plough Co. Assets as per Agreement of Nov. 21, 1906.

(b) In the Harrison Co. books the different Asset accounts would be closed into a Realization account which would subsequently be closed into Profit and Loss. The complete entries in Journal form are as follows:—

(1) Realization Account\$92,500

To Factory Premises\$75,000

To Machinery 11,500

To Stock-in-Trade 6,000

To transfer the Assets into a Realization Account.

| | |
|--|----------|
| (2) Morris Mfg. Co., Limited | \$60,000 |
| To Realization Account | \$60,000 |
| Selling price of Assets as per Agreement of Nov. 21, 1906. | |
| (3) Cash | \$15,000 |
| Morris Mfg. Co., Shares | 45,000 |
| To Morris Mfg. Co. | \$60,000 |
| Settlement for Sale of Assets as per Agreement of Nov. 21, 1906. | |
| (4) Creditors | \$12,500 |
| To Cash | \$12,500 |
| Paid Creditors in full. | |
| (5) Realization Account | \$2,500 |
| To Cash | \$2,500 |
| Liquidation Expenses. | |
| (6) Profit and Loss | \$35,000 |
| To Realization Account | \$35,000 |
| Total Loss in Realizing. | |
| (7) Capital Stock | \$55,000 |
| To Profit and Loss | \$55,000 |
| Total impairment of Capital to date. | |
| (8) Capital Stock | \$45,000 |
| To Morris Mfg. Co., Shares..... | \$45,000 |

Distributed the 450 shares of Morris Mfg. Co. stock pro rata among the Harrison Co. shareholders, certificates held by them aggregating \$100,000 being surrendered.

Examination Questions.

114. The Woods Manufacturing Co., Limited, and the Hayes Manufacturing Co., Limited, both of Toronto, amalgamate under the name of Woods and Hayes, Limited, with a share capital of \$500,000 divided into 5,000 shares of \$100 each, \$300,000 being 7 per cent. Preference Stock and the remainder Common Stock. It is agreed that \$200,000 Preference Stock and \$100,000 Common Stock shall be given for the Woods Company's business, and \$100,000 Preference Stock for the Hayes Company's business. Common Stock amounting to \$5,000 is voted to E. J. Woods in consideration of his services in bringing about the amalgamation. The Balance Sheets of the two companies at the time of the amalgamation were as follows :—

JOINT STOCK COMPANY ACCOUNTS.

BALANCE SHEET OF THE WOODS COMPANY, LIMITED.

| LIABILITIES. | | ASSETS. | |
|------------------------------------|-----------|---------------------------------------|-----------|
| Bills Payable | \$7,000 | Cash | \$16,000 |
| Mortgage Payable | 10,000 | Book Debts | \$8,000 |
| Interest accrued on mortgage | 200 | Bills Receivable | 20,000 |
| Capital Stock | 250,000 | | <hr/> |
| | | | \$28,000 |
| | | Less 10 p.c., provision for bad debts | 2,800 |
| | | | <hr/> |
| | | | 25,200 |
| | | Goods on hand | 80,000 |
| | | Machinery and Plant | 60,000 |
| | | Buildings and Land | 86,000 |
| | | | <hr/> |
| | <hr/> | | <hr/> |
| | \$267,200 | | \$267,200 |

BALANCE SHEET OF THE HAYES COMPANY, LIMITED.

| LIABILITIES. | | ASSETS. | |
|---------------------|-----------|--|-----------|
| Bills Payable | \$5,000 | Cash | \$8,000 |
| Capital Stock | 100,000 | Book Debts | 5,000 |
| Reserve | 3,300 | Bills Receivable | 9,000 |
| | | Interest accrued on Bills Receivable | 300 |
| | | Machinery, etc. | 56,000 |
| | | Goods on hand | 30,000 |
| | | | <hr/> |
| | <hr/> | | <hr/> |
| | \$108,300 | | \$108,300 |

Make the required Journal entries to open the new books of Woods and Hayes, Limited.

115. Post the above Journal entries to the Ledger and take off a Balance Sheet showing the present condition of the new concern.

116. Write up the Ledger of the Woods Company from the Balance Sheet given in Ex. Ques. 114; then make Journal entries necessary to record the transfer and close the books. Post the same and show Ledger properly balanced.

117. Write up a Ledger of the Hayes Company in the same manner, making the necessary Journal entries to record the transfer and close the books. Show Ledger properly balanced.

118. The following four limited companies amalgamate under the name of the Ontario Canning Company, Limited, with an Authorized Capital of \$1,000,000, consisting of 6,000 shares of \$100 each of 7 per cent. cumulative Preference Stock and 4,000 shares of Common Stock of \$100 each. The subjoined statement shows the Capitalization and Assets of each concern and also the amount of Preference Stock given in settlement by the new company to the shareholders of the old companies. Fifty shares of Preference Stock and 100 shares of Common Stock are given to W. H. Black for his services in promoting the consolidation. The remainder of the Common Stock was sold for Cash at par.

| Accounts. | Black Co. | Cooper Co. | Dale Co. | Edwards Co. |
|------------------------------|--------------|---------------|-------------|----------------|
| Capital Stock | 275,000 | 90,000 | 75,000 | 50,000 |
| Cash | 15,000 | 12,000 | 13,000 | 11,000 |
| Mdse..... | 40,000 | 30,000 | 25,000 | 18,000 |
| Plant..... | 60,000 | 25,000 | 20,000 | 15,000 |
| Real Estate..... | 125,000 | 32,000 | 15,000 | 18,000 |
| Preference Stock given | 300,000 | 125,000 | 90,000 | 80,000 |

Make Journal entries for opening up the books of the new company.

119 Three Bicycle Companies incorporated under the Ontario Companies Act are desirous of becoming amalgamated. What are the necessary steps to be taken to carry out the arrangement?

CHAPTER XIII.

FORFEITURE OF SHARES.

Forfeited Shares. Joint Stock Companies may enforce payment of all calls and interest thereon by action in any court of competent jurisdiction, or they may summarily forfeit the shares whereon such calls have not been paid provided due notice has been given to the registered holder of said shares. The effect of such forfeiture would be to forfeit all the rights of the holder of the shares and to reduce accordingly the issued capital of the company. These forfeited shares may be disposed of as the company may ordain by by-law or otherwise. In order that the Share Ledger may contain a proper record of such shares they should be entered up by transferring the amounts from the defaulting shareholder's account to a special account headed "Forfeited Shares," then when they are re-issued a similar entry should be made transferring the figures from "Forfeited Shares" account to that of the new holder. The entries required in the financial books are explained in the answers to the questions given in a subsequent part of this chapter. Those sections of the Ontario Companies Act and the Dominion Companies Act which give statutory authority to the procedure explained above should be carefully read.

Ex. Ques. 120. Thos. Pratt subscribes for 20 shares of stock of \$100 each in the Toronto Bread Co., Limited, and pays thereon a first call of 40 per cent. Failing to pay the next call of 25 per cent., his shares are forfeited by the Company. Make in Journal form entries for the entire transaction.

Ans.—The entries which follow are made on the assumption that the shareholders were charged for each call as it was made and credited when payment of same was made:

| | |
|-----------------------------------|-------|
| (1) Shareholders (T. Pratt) | \$800 |
| To Capital Stock | \$800 |

Call No. 1 being 40 per cent. on 20 shares stock.

| | |
|----------------------------------|-------|
| (2) Cash | \$800 |
| To Shareholders (T. Pratt) | \$800 |

Payment of call No. 1, being 40 per cent. on 20 shares stock.

| | |
|-----------------------------------|-------|
| (3) Shareholders (T. Pratt) | \$500 |
| To Capital Stock | \$500 |

Call No. 2, being 25 per cent. on 20 shares stock.

| | |
|--------------------------------------|---------|
| (4) Capital Stock | \$1,300 |
| To Shareholders (T. Pratt) | \$500 |
| To Profits on Forfeited Shares | 800 |

Being 20 shares stock on which 65 per cent. has been called and 40 per cent. paid, standing in name of T. Pratt, which have been forfeited today for non-payment of call No. 2.

At the time the company decides to forfeit the 20 shares, the total amount called up and credited to Capital Stock on account of these shares is \$1,300, only \$800 of which has been paid in, the balance being in arrears. This \$800 represents a clear profit to the company and is therefore credited to Profits on Forfeited Shares account. The outstanding share capital is reduced by \$1,300, hence Capital Stock account is debited with this amount. The portion of the forfeited stock which is in arrears, namely, \$500, must be credited to Shareholders account or whatever account was debited when the call was made.

Ex. Ques. 121. The above forfeited shares were resold as 65 per cent. paid up at \$50 per share. Make entry.

Ans.—When forfeited shares are resold at a discount Profits on Forfeited Shares should be charged with the amount of such discount, as credit was given to this account for the profit made at the time of forfeiture. The entry would therefore be:—

| | |
|-----------------------------------|---------|
| Cash | \$1,000 |
| Profits on Forfeited Shares | 300 |
| To Capital Stock | \$1,300 |

For 20 shares of stock, previously forfeited, re-issued as 65 per cent. paid up, price received being \$50 per share.

The account for Profits on Forfeited Shares would ultimately be closed into Profit and Loss account.

Examination Questions.

122. Jas. Malcolm subscribes for sixty shares of the Bracebridge Leather Company's stock at par and pays calls amounting to 40 per cent. His shares were then forfeited owing to non-payment of subsequent calls. A week later the forfeited shares were sold by the company to Thos. Mitchell at par for cash. Make entries at the time of forfeiture and also when subsequently sold to Mitchell.

123. John Miller subscribed for sixty shares of the Berlin Wagon Company's stock at par and after paying 35 per cent. on the same his shares were forfeited for non-payment of calls. Make Journal entries:—

- (a) If Capital Stock accounts represents subscribed capital;
- (b) If it represents Paid-up Capital.

124. The Newmarket Woodenware Company, Limited, purchases the business of Geo. Black, London, paying for it \$5,000 cash, 50 shares, \$100 each, of fully paid-up Preference Stock, bearing 6 per cent. preferential, cumulative dividends, and 150 shares of \$100 each of Common Stock. The Assets taken over by the company were as follows: Plant, \$3,500; Book Debts, \$4,000; Manufactured Goods, \$5,000; Goods in Process of Manufacture, \$6,000; and Raw Material, \$3,000. Make entries in the Company's books.

125. Show closing entries for above in books of Geo. Black.

126. Three Joint Stock Companies engaged in the book business amalgamate their interests under the name of the Hamilton Book Syndicate, Limited. It is agreed that Stock-in-Trade be taken over at a discount of 20 per cent., fixtures at a depreciation of 25 per cent., and that Book Debts be subject to a discount of 10 per cent. to be set aside as a Reserve for Bad Debts. On this basis 7 per cent. Preferential Cumulative Stock is issued for the amount of the Net Assets of the three concerns. As payment for Goodwill they receive \$3,000, \$4,000 and \$5,000 Common Stock respectively. On the date of amalgamation the Balance Sheets of the three companies show the following totals:—

| Accounts. | No. 1. | | No. 2. | | No. 3. | |
|----------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| | Dr. \$ | Cr. \$ | Dr. \$ | Cr. \$ | Dr. \$ | Cr. \$ |
| Cash on hand..... | 600 | | 500 | | 800 | |
| Stock-in-Trade..... | 4,000 | | 6,000 | | 10,000 | |
| Fixtures..... | 500 | | 1,000 | | 3,000 | |
| Book Debts..... | 1,200 | | 2,000 | | 4,000 | |
| Reserve Account..... | | 900 | | 600 | | 1,100 |
| Capital Stock..... | | 5,400 | | 8,900 | | 16,700 |
| | \$6,300 | \$6,300 | \$9,500 | \$9,500 | \$17,800 | \$17,800 |

Cash is handed over in all cases in place of the fractional portion of a share. Make Journal entries to open a new set of books for the Syndicate.

127. Make Journal entries to close the books of each of the companies entering the above syndicate.

CHAPTER XIV.

DIVIDENDS AND RESERVES.

Dividends. When the directors of a Joint Stock Company consider it advisable to apportion the profits of the business a dividend is declared. The dividend does not usually include all of the accumulated profits, but only such a part of them as can safely be taken out of the company's funds without depriving it of the Cash necessary to advantageously conduct its business. Where the profits have been sufficiently large to warrant the declaration of a dividend but the surplus cash has been used for the purpose of buying additional plant, material, etc., it is not an unusual thing for a company to declare a Stock Dividend instead of a Cash Dividend. A Stock Dividend consists of shares in the company equal in value to the amount of profits to be distributed, whereas a Cash Dividend, as its name implies, is payable in Cash. When a dividend is declared a Journal entry should be made similar to the following:—

| | |
|-------------------------|---------|
| Profit and Loss | \$3,000 |
| To Dividend No. 2 | \$3,000 |

Dividend of 6 per cent declared upon \$50,000 stock as per directors' minute book, page 42.

If the dividend is payable in cash it is advisable to draw a cheque for the full amount against the company's current bank account and deposit it to the credit of the company in a special account to be marked "Dividend Account." Cheques against this account would be issued to the shareholders as per Dividend List and an entry for the aggregate amount passed through the Cash Book as follows:—

| | |
|-------------------------|---------|
| Dividend No. 2 | \$3,000 |
| To Cash (or bank) | \$3,000 |

Cheques issued to shareholders in payment of dividend as per Dividend Book, page 10.

In the case of a Stock Dividend instead of crediting Cash the Capital Stock account should be credited for the \$3,000 additional stock issued. Only whole shares could be given to the individual shareholders, so that if any were entitled to the fractional portion of a share arrangements would be made by which he would either pay in sufficient cash to entitle him to the full share or receive cash for the value of the fractional portion of a share not issued.

Dividends must not be Paid out of Capital. That dividends must be paid only out of the accumulated profits of the company is clearly laid down in the different Companies Acts. Section 83 of the Ontario Companies Act reads as follows:—"The directors shall not declare or pay any dividend when the company is insolvent, or any dividend the payment of which renders the company insolvent, or diminishes the capital thereof; but if any director present when such dividend is declared, forthwith, or if any director then absent, within twenty-four hours after he has become aware thereof, and able so to do, enters his written protest against the same, and within eight days thereafter causes such protest to be notified, by registered letter, to the Provincial Secretary, such director may thereby, and not otherwise, exonerate himself from liability." The Dominion Companies Act in section 58 says:—"No dividend shall be declared which will impair the capital of the company." Shareholders have no legal rights to a dividend until after it has been declared by the directors; from that time until it is paid it is a debt of the company to the shareholders and may be enforced as such. Dividends are payable to the persons in whose names the shares are registered in the company's books at the date of declaring the dividend.

Reserves. A well-managed company rarely distributes the whole of its accumulated profits as dividends; a reasonable proportion is generally set aside to provide for future contingencies or to assist in paying dividends in a less prosperous year. "Reserve," "Surplus" or "Rest" are names used to designate the account opened when profits are appropriated to this purpose. The term Reserve is used in different senses by writers on accountancy, but in this connection it simply means that part of the ascertained Net Profits of a business which might legally have been used for dividend purposes but which the directors have reserved or capitalized for the time being instead. Such reserves are not usually invested in any "ear-marked" fund outside the business, but as a rule are kept within the business itself, having been absorbed as part of the Net Assets of the concern. In the Balance Sheet Reserve account always appears on the Liability side and should indicate the amount by which the total Assets exceed the total Liabilities plus Capital Stock paid in; in other words, by whatever name it may be known, it is really the undivided Net Profits of a business. It is frequently spoken of as a Reserve Fund, but the writer is of the opinion that the meaning of the term is better understood by the omission of the word "Fund."

The entry to be made when a certain proportion of the Net Profits is set aside as a Reserve is as follows:—

| | |
|-----------------------|---------|
| Profit and Loss | \$2,000 |
| To Reserve | \$2,000 |

By resolution of the directors the sum of \$2,000 was carried to the Reserve account out of the Net Profits for the year ending Dec. 31, 1906.

If at the end of the following year the directors found it necessary to use part of this Reserve to offset special losses or to help pay the customary dividend, the entry would be:—

| | |
|--------------------------|---------|
| Reserve | \$1,500 |
| To Profit and Loss | \$1,500 |

Transferred above amount from Reserve account by order of directors to be applied to dividend for past year.

Reserve for Bad Debts, etc. The term Reserve is also used in the sense of a provision against expected or estimated losses which must be allowed for before the true Net Profit of the business can be ascertained. Under this class would come "Reserve for Bad Debts," "Reserve for Depreciation of Machinery," etc. Such Reserves, instead of appearing on the Liability side of the Balance Sheet, are deducted from the gross amount of the Assets to which they respectively apply; for instance, if the total amount of Book Debts per Ledger were \$6,000 and \$600 were the Reserve for Bad Debts, the Asset in the Balance Sheet would be extended at \$5,400. The entry would first be put through the Journal as follows:—

| | |
|--------------------------------|----------|
| Profit and Loss | \$600.00 |
| To Reserve for Bad Debts | \$600.00 |

Wrote off \$600 as a provision against Bad Debts.

Under no consideration must the separate individual Ledger accounts be written down; the provision is only intended to apply to the accounts in the aggregate. Bad Debts, as they are definitely ascertained from time to time, should be kept in a special Bad Debts account, which is subsequently closed at the end of the year into the Reserve for Bad Debts account or vice versa.

We will now assume that in the year following the one in which we have made the entry crediting Reserve for Bad Debts for \$600, that the loss through Bad Debts amounted to \$460, brought about in the following manner: Wm. Smith owed \$2,000 but compromised at 77 cents on the dollar. At the time of settlement the following entry would be made:

| | |
|---------------------------|------------|
| Cash (in Cash Book) | \$1,540.00 |
| Bad Debts | 460.00 |
| To Wm. Smith | \$2,000.00 |

The Bad Debts account now shows a debit of \$460, and if there were no Reserve for Bad Debts account it would be closed at the end of the

year into Profit and Loss, but as we have \$600 at the credit of Reserve for Bad Debts an entry would be made at the end of the year, transferring sufficient from this account to offset the \$460 loss as follows :—

| | |
|-----------------------------|----------|
| Reserve for Bad Debts | \$460.00 |
| To Bad Debts | \$460.00 |

This would close Bad Debts account and leave \$140 still at the credit of Reserve for Bad Debts. If the losses from this source during the year had been \$1,000, which is greater than the whole amount reserved by \$400, the following entry would have been made at the end of the year :—

| | |
|-----------------------------|----------|
| Reserve for Bad Debts | \$600.00 |
| To Bad Debts | \$600.00 |

This would transfer the whole amount reserved to the Bad Debts account, which would still have a debit excess of \$400 and would be closed into the Profit and Loss as follows :—

| | |
|-----------------------|----------|
| Profit and Loss | \$400.00 |
| To Bad Debts | \$400.00 |

Sometimes losses of this nature are charged directly to the Reserve for Bad Debts account, instead of being carried to a Bad Debts account, but it is obvious that the losses of different years can be more readily compared by keeping the two accounts.

Examination Questions.

128. The Toronto Woodenware Co., Limited, having a Paid-up Capital of \$40,000, ends its first business year with a Net Profit of \$5,000. The directors declare a Cash Dividend of 5 per cent. and a Stock Dividend of 5 per cent., and order the balance of the profits to be transferred to a Reserve account. The required cheques and stock certificates are issued a week later. Make all the entries.

129. Before providing anything for possible Bad Debts in the ensuing year, a company's Revenue account showed a Net Profit of \$9,000. It was decided to set aside \$1,200 as a Reserve for Bad Debts, after which a Cash Dividend of 6 per cent. and a Stock Dividend of 5 per cent. were declared on a Paid-up Capital of \$60,000. The cheques and stock certificates were issued in due course. Make the required Journal entries.

130. The foregoing company in its next business year incurred the following losses through Bad Debts :—

Note against Geo. Green for \$350—Settled at 30 per cent. of its face.

Note against W. Stewart for \$260—Settled at 40 per cent. of its face.

Account against Thos. Brown for \$450—Settled at 60 cents on the dollar.

Show entries made at the time of settlement, also those made at the end of the year previous to making the company's Annual Financial Statement.

131. The Elgin Grocery Company is incorporated with an Authorized Capital of \$50,000 divided into 1,000 shares of \$50 each. Geo. Elgin subscribes and pays for 400 shares and is given 30 shares for his services as promoter. The other subscribers pay cash in full of their subscriptions as follows: Jas. Watt, 80 shares; T. King, 75 shares; S. White, 120 shares; G. Hood, 90 shares; Wm. Smith, 60 shares; and D. Brown, 40 shares. At the end of the year the books of the company show a Net Profit of \$8,000. The directors decide to write \$1,000 off the Organization account, to declare a dividend of 10 per cent. on the Paid-up Capital and to carry the balance of the profits to Reserve account. Make Journal entries at the commencement and at the close of the year.

132. A company's Net Profits, before making any allowance for Depreciation, etc., amount to \$30,000. It is decided to write $7\frac{1}{2}$ per cent. off Machinery, listed at \$4,000, and 20 per cent. off Patterns which cost \$5,000. Ten per cent. is also deducted from Book Debts and Bills Receivable amounting to \$16,000 to create a Reserve for Bad Debts. The rest of the profits are distributed in the form of a Cash Dividend of \$14,400 and a Stock Dividend for the remainder. Make Journal entries.

133. The total Paid-up Capital of the Newmarket Woodenware Co., Limited, consists of 2,000 shares of Preference Stock and 1,000 shares of Common Stock, of \$100 each, the former bearing 6 per cent. Preferential Cumulative Dividends. At the end of the first year the Net Profits amount to \$18,000; after paying the dividend on the Preference Stock, and carrying \$2,000 to a Reserve account, the remainder is distributed as a Dividend on Common Stock. At the end of the second year the Net Profits amount to \$7,000, so the Reserve account is closed and \$9,000 distributed among the Preference shareholders. The third year's profits amount to \$18,000; the dividends due upon the Preference Stock are paid and the balance distributed as a dividend on Common Stock. Make Journal entries required at the end of each year.

CHAPTER XV.

BONDS OR DEBENTURES.

Bonds or Debentures. Bonds or debentures issued by a company are instruments given under the seal of the company, containing a covenant to repay the principal sum for which the company therein admits indebtedness, together with interest thereon at a stated rate. They are usually secured by mortgages on the company's property made in favor of trustees appointed for the purpose, and are issued subject to such conditions as may be endorsed upon the debentures. Debentures secured in this way are commonly known as Mortgage Bonds and the holders are really preferential creditors of the company issuing them.

Debentures may be subdivided into "Registered Debentures" and Debentures to Bearer." Registered Debentures are those which are expressed to be payable only to the registered holder and to effect a change of ownership the transfer must be duly registered with the company. Debentures to bearer are payable to the bearer thereof and pass by simple delivery without registration or assignment.

Debentures may also be classified as Redeemable or Terminable debentures and Irredeemable or Perpetual debentures. The former are those which provide for the repayment of the principal sums, while the latter are repayable only on default of payment of interest or on the winding-up of the company. Debentures may be issued at par, at a premium, or at a discount, but are redeemable at par at maturity.

Bookkeeping Entries. The bookkeeping entries connected with the issue of bonds are comparatively simple and are given in connection with the answers to the problems which follow. The same general rule applies as for the issue and payment of promissory notes, namely, credit the account representing them for their face value when issued and debit the same account for their face value when redeemed.

Ex. Ques. 134. A company sold at par, 5 per cent. mortgage bonds aggregating \$15,000. Make entry.

Ans.—The Cash received is \$15 000, which is also the face of the bonds issued. Enter as follows:—

| | |
|--|-----------------|
| Cash | \$15,000 |
| To Mortgage Bonds Payable | \$15,000 |

Sold \$15,000 Five per cent. bonds at par.

Ex. Ques. 135. Sold at 104, Mortgage Bonds bearing $5\frac{1}{2}$ per cent. and aggregating \$15,000. Make entry.

Ans.—The Cash received in this case is \$15,600, covering the face of the bonds, \$15,000, and the premium, \$600. Enter as follows :—

| | |
|---------------------------------|----------|
| Cash | \$15,600 |
| To Mortgage Bonds Payable | \$15,000 |
| To Premium on Bonds | 600 |

Sold $5\frac{1}{2}$ per cent. bonds aggregating \$15,000 at 104.

Ex. Ques. 136. Sold \$15,000 of 4 per cent. bonds at 98. Make entry.

Ans.—The Cash received is \$14,700, being face of bonds, \$15,000, less \$300 discount. Enter as follows :—

| | |
|---------------------------------|----------|
| Cash | \$14,700 |
| Discount on Bonds | 300 |
| To Mortgage Bonds Payable | \$15,000 |

Sold \$15,000 of 4 per cent. bonds at 98.

Ex. Ques. 137. Bonds aggregating \$3,000 were redeemed to-day. Make entry.

Ans.—When bonds are redeemed at maturity the account representing them must be debited for their face value, as follows :—

| | |
|------------------------------|---------|
| Mortgage Bonds Payable | \$3,000 |
| To Cash | \$3,000 |

Redeemed \$3,000 Bonds due today.

Bonds are frequently issued with coupons for the interest attached; such bonds are known as Coupon Bonds. These coupons are torn off as they fall due and presented for payment; the entry in such cases being :—

| | |
|--------------------------|-------|
| Debenture Interest | \$150 |
| To Cash | \$150 |

Paid 5 per cent. Debenture Coupons due today.

The coupons are filed away as vouchers for all payments made in this way. The debentures themselves when redeemed are also filed as evidences of payment.

Examination Questions.

138. Define and distinguish between the following :—

(a) Terminable Debentures and Perpetual Debentures.

(b) Registered Debentures and Debentures to Bearer.

139. State the conditions under which debentures may be issued by companies working under the Ontario Companies Act.

140. Explain and illustrate the entries to be made when bonds are sold at par, at a premium, or at a discount.

CHAPTER XVI.

COMPANY FINANCIAL STATEMENTS.

Financial Statements. At the end of each year, and sometimes more frequently, Joint Stock Companies compile from their books financial statements, showing the condition of the business at that particular time and its profit or loss for the period just ended. These statements vary somewhat in form according to the nature and extent of the business, but generally consist of a Profit and Loss account and a Balance Sheet. The Profit and Loss account—sometimes called the Revenue account—shows the earnings of the business alongside the expenditure, the difference between the two sides being the Net Profit or Net Loss for the year. It should be divided into at least two sections for the purpose of enabling the manufacturer or merchant to make useful comparisons from year to year, and to locate more readily the causes of any noticeable increase or decrease in the year's net earnings.

The Trading Account. The first section of the Profit and Loss account of the business of a non-manufacturing trader is the Trading account. On its debit side it shows the total cost of the goods received into stock, made up of the inventory carried over from the previous period and the purchases for the current period plus freight and duty, less returns; on the credit side it shows the sales of the period less returns, to which must be added the value of the goods remaining unsold; the difference between the debit and credit sides then gives the Gross Profit of the business. In cases where the figures are to be used for the purpose of compiling comparative percentage statements, it is advisable to deduct the amount of the unsold goods from the debit side instead of adding it to the credit side, thus showing the actual cost of the goods sold in contrast with the sales, as per following form:—

| <i>Dr.</i> | TRADING ACCOUNT. | <i>Cr.</i> |
|------------------------------------|--|--------------|
| Goods on hand, Jan. 1. \$20,000.00 | Sales for year..... | \$235,000.00 |
| Purchases for | | |
| year \$186,000 | | |
| Freight and Duty 4,500 | 190,500.00 | |
| | \$210,500.00 | |
| Deduct inventory, Dec. 31 | 19,000.00 | |
| | Total cost of goods sold. \$191,500.00 | |
| Gross Profit | 43,500.00 | |
| | \$235,000.00 | \$235,000.00 |

In cases where the cost of manufacturing is not kept in a separate section by itself, the Trading Account would include on its debit side Wages, Factory Expenses, and any other items which formed part of the full cost of the goods handled as shown in following form :—

| <i>Dr.</i> | TRADING ACCOUNT. | <i>Cr.</i> |
|------------------------------|------------------|--------------------|
| Stock on hand, Jan. 1..... | \$8,000 | Sales.....\$66,500 |
| Purchases to Dec. 31..... | \$29,000 | |
| Freight and Duty ... | 2,800 | |
| | ————— 31,800 | |
| Wages | 12,500 | |
| Factory Expenses | 1,500 | |
| | ————— | |
| | \$53,800 | |
| Deduct inventory, Dec. 31... | 10,000 | |
| | ————— | |
| Total cost of goods sold ... | \$43,800 | |
| Gross Profit | 22,700 | |
| | ————— | |
| | \$66,500 | |
| | ————— | |
| | | ————— \$66,500 |

The Manufacturing Account. The first section of the Profit and Loss account in a manufacturing business is termed the Manufacturing account, and may be kept merely for the purpose of ascertaining the actual cost of the goods manufactured, or, if desired, so as to show the profit on manufacturing, as distinguished from the profit on trading. When kept to show actual cost only, the Manufacturing account includes on its debit side all items entering into the cost of the goods manufactured and on its credit side the manufacturing inventory, which consists of raw material and goods in process of manufacture. The difference between the two sides constitutes the manufacturing cost of the output, which is carried to the debit side of the Trading Account, as shown in the statements prepared from the transactions given below :—

Inventories, Jan. 1st :—

| | |
|------------------------|-------------|
| Raw Material | \$2,300 |
| Unfinished Goods | 400 |
| Finished Goods | 4,500 |
| | ————— 7,200 |

Purchases :—

| | |
|----------------------|-------------|
| Raw Material | \$6,000 |
| Finished Goods | 3,000 |
| | ————— 9,000 |

Freight and Duty :—

On Raw Material\$1,800

On Finished Goods 900

2,700

Wages 4,000

Factory Expenses 400

Sales 18,000

Inventories, Dec. 31st :—

Raw Material\$2,500

Unfinished Goods 800

Finished Goods 5,600

\$8,900*Dr.*

MANUFACTURING ACCOUNT.

Cr.

Inventory, Jan. 1st :—

Raw Material\$2,300

Unfinished Goods . 400

\$2,700

Purchases of Raw

Material\$6,000

Freight and Duty . 1,800

7,800

Wages..... 4,000

Factory Expense..... 400

\$14,900

Inventory, Dec. 31st :—

Raw Material\$2,500

Unfinished Goods . 800

\$3,300Cost of goods manufac-
tured transferred to

Trading Account..... 11,600

\$14,900*Dr.*

TRADING ACCOUNT.

Cr.

Inventory of Finished Goods,

Jan. 1 \$4,500

Cost of Goods Manufactured

during the year, per Man-

ufacturing Account..... 11,600

Purchases of Finished

Goods\$3,000

Freight and Duty..... 900

3,900

\$20,000

Deduct inventory of Finished

Goods, Dec. 31 5,600

\$14,400

Dr. **TRADING ACCOUNT.—Continued.** *Cr.*

Gross Profit transferred to
Profit and Loss account... 3,600

\$18,000

\$18,000

If the manufacturer desires to separate the Manufacturing Profit from his Trading Profit, he would charge the Trading account the same price for goods manufactured by himself as would have been charged if these goods had been bought wholesale from other manufacturers. Assuming, for the purpose of illustration, that the goods shown in the foregoing Manufacturing account have been transferred to the Trading account at a trade price of \$13,340, instead of at actual cost, \$11,600, there would be a Manufacturing profit of \$1,740, but the Trading profit would be reduced by exactly the same amount and would then show a Trading profit of \$1,800 instead of \$3,600. Both of these profits being afterwards transferred to the Profit and Loss account, the same final result is brought about as if the Manufacturing profit had not been considered separately at all. In order that the distinction between these two methods may be more readily understood, the Manufacturing and Trading accounts for the same transactions are here shown in the form just described:—

Dr. **MANUFACTURING ACCOUNT.** *Cr.*

Inventory Jan. 1st. :—

Raw Material..... 2,300

Unfinished Goods . 400

\$2,700

Purchase of Raw

Material\$6,000

Freight and Duty. 1,800

7,800

Wages 4,000

Factory Expense 400

\$14,900

Deduct inventory, Dec. 31 :—

Raw Material\$2,500

Unfinished Goods .. 800

3,300

Manufacturing Cost\$11,600

Output charged to Trad-

ing Account\$13,340

Dr. MANUFACTURING ACCOUNT.—*Continued.* *Cr.*

| | | |
|--|----------------|----------------|
| Manufacturing Profit carried to Profit and Loss account | 1,740 | |
| | <hr/> \$13,340 | <hr/> \$13,340 |

Dr. TRADING ACCOUNT. *Cr.*

| | | | |
|---|----------------|----------------------|----------------|
| Inventory Finished Goods, Jan. 1st | \$4,500 | Sales for year | \$18,000 |
| Output from factory for year. | 13,340 | | |
| Purchases of Finished Goods | \$3,000 | | |
| Freight and Duty ... | 900 | | |
| | <hr/> 3,900 | | |
| | \$21,740 | | |
| Deduct inventory Manufac- tured Goods on hand Dec. 31 | 5,600 | | |
| | <hr/> \$16,140 | | |
| Trading Profit carried to Profit and Loss account... | 1,860 | | |
| | <hr/> \$18,000 | | <hr/> \$18,000 |

The Profit and Loss Account. After the Gross Profit has been transferred from the Trading account to the credit side of the Profit and Loss account, the latter is then debited with the remaining expenditure items; the difference between the two sides, as it then stands, will show the Net Profit or the Net Loss for the year. Even this portion of the Profit and Loss account is sometimes subdivided, as for instance, when there are special profits or losses arising from investments outside the business proper or when a Profit and Loss balance has been carried over from a previous year. The Profit or Loss arising from the legitimate business of the concern during the period covered by the statement should be shown distinctly in any event; if any other Profits or Losses are to be incorporated, this should be done in a separate section of the statement. The following shows the application of this principle:—

| <i>Dr.</i> | PROFIT AND LOSS ACCOUNT. | <i>Cr.</i> |
|-------------------------------------|--------------------------|---|
| Rent | \$1,500 | Gross Profit from Trading |
| Salaries | 3,500 | Account |
| Insurance | 200 | Discount on Purchases |
| Advertising | 1,200 | |
| General Expense | 800 | |
| Discounts on Sales | 900 | |
| | <hr/> | |
| | \$8,100 | |
| Net Profit for year carried | | |
| down | \$7,600 | |
| | <hr/> | |
| | \$15,700 | <hr/> |
| | | \$15,700 |
| Dividend No. 9, 6 per cent. \$6,000 | | Surplus Profits from last year. \$2,000 |
| Reserve Fund | 2,500 | Net Profit for year brought |
| Balance carried forward to | | down |
| next year | 1,100 | 7,600 |
| | <hr/> | <hr/> |
| | \$9,600 | \$9,600 |
| | <hr/> | <hr/> |

Departmental Trading Accounts. The enormous development in recent years of the Departmental principle as applied to mercantile establishments has made the question of Departmental Accounting a most important one. It is not sufficient to know whether the business as a whole is paying or not, the accountant must be able to show from his books how each department stands, whether it is making money or losing it. To do this he must treat each department, as far as possible, as a separate business and prepare his accounts accordingly. In compiling his Annual Statement instead of showing one Trading Account he will have one for each department, all of which will be closed into the same general Profit and Loss account. The Departmental Trading account differs materially from those we have already considered, owing to the fact that it is charged, not only with the cost of the goods handled, but also with the entire expenses of running the department both direct and indirect. It is not always easy to determine the best method of apportioning indirect charges against the department; each business has to adopt the plan best suited to its particular conditions. Take the item of Rent, for instance; this may be divided in proportion to the floor space occupied by the different departments, the relative value of the floor space, the value of the stock carried or the Sales. The salaries paid to the clerks of the various departments

are a direct charge, but the cost of management, advertising, delivery of goods, etc., would probably be apportioned according to the Sales. These, however, are matters for the directors or managers of the concern to decide, although the opinion of the accountant would doubtless be accepted in most cases.

For each department a separate Trading Account similar to the following would be made out :—

| <i>Dr.</i> TRADING ACCOUNT, DRESS GOODS DEPARTMENT. <i>Cr.</i> | |
|---|-----------------------|
| Inventory, Jan. 1st | \$30,000 |
| Purchases | \$60,000 |
| Freight and Duty . | 9,600 |
| | <hr/> 69,600 |
| | <hr/> \$99,600 |
| Deduct inventory, Dec. 31st | 25,000 |
| | <hr/> \$74,600 |
| Gross Profit carried down . | 25,400 |
| | <hr/> \$100,000 |
| | <hr/> <hr/> \$100,000 |
| Salaries | \$5,000 |
| Department Expenses | 1,000 |
| Proportion of Rent | 3,000 |
| Proportion of General Ex- pense | 2,500 |
| | <hr/> \$11,500 |
| Net Profit of Department carried down to General Profit and Loss account. | 13,900 |
| | <hr/> \$25,400 |
| | <hr/> <hr/> \$25,400 |

Balance Sheets. A Balance Sheet is a statement of the assets and liabilities of a business, arranged in such a way as to show clearly the financial position of the concern at a particular time. The English form of Balance Sheet (that is the arrangement of the Liabilities on the left-hand side, and the Assets on the right) is the one in most general use in Canada and the United States, although a great many accountants prefer to reverse the order by putting the Assets on the first page and the

Liabilities on the second. In the Balance Sheet of a Limited Company the Paid-up Capital is included among the Liabilities and is generally mentioned first, the Balance Sheet being completed by entering the Net Profit on the liability side or the Net Loss on the asset side. It will also be noted that Depreciations and Reserves for Bad Debts, etc., are deducted from the Assets to which they apply, while the Reserve Account, consisting of undistributed Profits, appears on the Liability side of the sheet.

BALANCE SHEET, DECEMBER 31ST, 1906.

| LIABILITIES. | ASSETS. |
|---|------------------------------------|
| Capital :— | Factory Premises \$50,000 |
| 1,600 shares, fully paid. \$160,000 | Plant and Machinery \$65,000 |
| Creditors :— | Less 7½ per cent. |
| On Open Account \$12,000 | Depreciation... 4,875 |
| On Bills Payable 15,000 ————— 27,000 | 60,125 |
| Reserve Account 10,000 | Patent Rights 3,000 |
| Profit and Loss Account. 19,125 | Stock in Trade 39,000 |
| | Debtors :— |
| | On Open Account.. \$6,000 |
| | On Bills Receivable 40,000 |
| | ————— \$46,000 |
| | Less Provision for |
| | Bad Debts 1,500 |
| | ————— 44,500 |
| | Cash in Bank 19,500 |
| ————— \$216,125 | ————— \$216,125 |

Ex. Ques. 141. A better understanding of the foregoing explanation on Balance Sheets, etc., will perhaps be obtained by studying carefully the answer to the following problem which appeared on the Intermediate bookkeeping paper at the 1906 examinations of the Institute of Chartered Accountants of Ontario :—

From the following Trial Balance of 30th June, 1905, prepare a Manufacturing Account, Trading Account, and Profit and Loss Account, also a Balance Sheet :—

| | |
|--------------------------------|--------------|
| Cash on hand and in bank | \$2,409.67 |
| Sales | \$149,438.20 |
| Raw materials | 2,483.00 |

| | | |
|---|---------------------|---------------------|
| Partly manufactured goods | \$2,570.00 | |
| Manufactured goods | 7,496.00 | |
| Returns from customers | 764.19 | |
| Bank for advances | | \$10,000.00 |
| Discounts allowed customers | 2,387.10 | |
| Bills receivable | 11,007.09 | |
| Accounts receivable | 7,095.23 | |
| Purchases | 48,760.00 | |
| Discounts received on purchases | | 751.13 |
| Factory wages | 28,647.00 | |
| Sundry creditors | | 2,688.17 |
| Land and buildings | 15,000.00 | |
| Mortgage account (int. paid) | | 7,500.00 |
| Goodwill | 200,000.00 | |
| Taxes | 161.50 | |
| Light, heat and power | 492.00 | |
| Advertising | 4,786.00 | |
| Capital stock | | 200,000.00 |
| Travellers' salaries and expenses | 6,490.18 | |
| Freight in | 970.47 | |
| Plant and machinery | 5,000.00 | |
| Repairs | 650.76 | |
| Interest and bank charges | 2,340.75 | |
| Reserve account (depreciation) | | 1,000.00 |
| General expenses | 1,845.14 | |
| Profit and loss account | | 1,878.58 |
| Salaries, office and warehouse | 15,400.00 | |
| " Factory superintendent | 1,500.00 | |
| " Management | 5,000.00 | |
| | <u>\$373,256.08</u> | <u>\$373,256.08</u> |

2½ per cent. depreciation on plant and machinery and buildings and land to be reserved. Charge factory \$1,000 for rent. Taxes for year, \$367, not paid. Insurance, \$260, paid 1st April, 1905. 11-12ths light, heat and power chargeable to factory. Inventory: Raw material, \$2,870; partly manufactured, \$1,960; manufactured goods, \$6,400.

Dr.

MANUFACTURING ACCOUNT.

Cr.

Inventory, 30th June, 1904:—
Raw Material. \$2,483

Inventory, 30th June, 1905:—
Raw Material. \$2,870

COMPANY FINANCIAL STATEMENTS.

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| <i>Dr.</i> | MANUFACTURING ACCOUNT.— <i>Continued.</i> | <i>Cr.</i> |
|---|---|---|
| Partly Manufac- tured Goods 2,570 | | Partly Manufac- tured Goods 1,960 |
| | \$5,053.00 | |
| Purchases | 48,760 00 | Cost of Goods Manufac- tured during year, transferred to Trad- ing Account |
| Freight in..... | 970.47 | 82,327.23 |
| Wages | 28,647.00 | |
| Light, Heat and Power (11-12ths of total cost) | 451.00 | |
| Repairs | 650.76 | |
| Salary of Factory Super- intendent | 1,500 00 | |
| Rent charged against factory | 1,000.00 | |
| Depreciation on Machin- ery, 2½ per cent..... | 125.00 | |
| | <u>\$87,157.23</u> | <u>\$87,157.23</u> |

| <i>Dr.</i> | TRADING ACCOUNT. | <i>Cr.</i> |
|--|---------------------|---|
| Inventory, 30th Jan., 1904 :— | | Sales |
| Manufactured Goods. \$7,496.00 | | \$149,438.20 |
| Cost of Goods Manufac- tured, as per Manu- facturing Account ... | 82,327.23 | Less Returns |
| | | 764.19 |
| | <u>\$89,823.23</u> | <u>\$148,674.01</u> |
| Gross Profit transferred to Profit and Loss ac- count | 65,250.78 | Inventory of Mfd. Goods, 30th June, 1905 |
| | | 6,400.00 |
| | <u>\$155,074.01</u> | <u>\$155,074.01</u> |

| <i>Dr.</i> | PROFIT AND LOSS. | <i>Cr.</i> |
|--|------------------|--|
| Travellers' Salaries and Expenses | 6,490.18 | Gross Profit from Trad- ing Account |
| Salaries, Office and Ware- house | 15,400.00 | \$65,250.78 |
| Discounts allowed cus- tomers | \$2,387.10 | Rent charged against factory |
| Taxes | \$161.50 | 1,000.00 |
| Add unpaid.. | 367.00 | Discounts on Purchases. |
| | | 751.13 |
| | <u>528.50</u> | |

Dr.

PROFIT AND LOSS.—Continued.

 Cr

| | | | |
|--|-------------------|--|-------------------|
| Light, Heat and Power (1-12 of total cost) ... | 41.00 | | |
| Advertising | 4,786.00 | | |
| Interest and bank charges | 2,340.75 | | |
| General Ex- penses\$1,845.14 | | | |
| Less Insurance prepaid ... \$195.00 | | | |
| | <hr/> 1,650.14 | | |
| Salary of Manager..... | 5,000.00 | | |
| Depreciation on Land and Buildings, 2½ p.c. ... | 375.00 | | |
| | <hr/> \$38,998.67 | | |
| Net Profit for year..... | 28,003.24 | | |
| | <hr/> \$67,001.91 | | |
| | <hr/> | | <hr/> \$67,001.91 |
| Total balance at credit of Profit and Loss ac- count | | \$29,881.82 | |
| | <hr/> | | |
| | \$29,881.82 | | |
| | <hr/> | | |
| | | Balance from last year...\$ 1,878.58 | |
| | | Net Profit for current year 28,003.24 | |
| | | <hr/> | \$29,881.82 |
| | | <hr/> | <hr/> \$29,881.82 |

BALANCE SHEET FOR THE YEAR ENDING JUNE 30, 1905.

| LIABILITIES. | | ASSETS. | |
|-------------------------|-------------|-------------------------|------------|
| Bank for Advances ... | \$10,000.00 | Cash on hand and in | |
| Mortgage Payable | 7,500.00 | bank | \$2,409.67 |
| Accounts Payable | 2,688.17 | Bills Receivable | 11,007.09 |
| Unpaid Taxes | 367.00 | Accounts Receivable ... | 7,095.23 |
| Capital Stock | 200,000.00 | Land and Build- | |
| Balance at credit of | | ings | \$15,000 |
| Profit and Loss account | 29,881.12 | Plant and Ma- | |
| | | chinery | 5,000 |
| | | | <hr/> |
| | | | \$20,000 |

BALANCE SHEET FOR THE YEAR ENDING JUNE 30, 1905—*Continued.*

| | | |
|---------------------|-------------------------|---------------------|
| | Less Depreciation | |
| | Reserve | 1,500 |
| | | <u>18,500.00</u> |
| | Goodwill | 200,000.00 |
| | Insurance prepaid | 195.00 |
| | Stock-in-Trade :— | |
| | Raw Material. \$2,870 | |
| | Partly Mfd. ... 1,960 | |
| | Manufactured.. 6,400 | |
| | | <u>11,230.00</u> |
| <u>\$250,436.99</u> | | <u>\$250,436.99</u> |

CHAPTER XVII.

THE DOMINION COMPANIES ACT AS AMENDED TO 1906.

An Act respecting the Incorporation of Joint Stock Companies by Letters Patent.

(Assented to 15th May, 1902.)

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

SHORT TITLE.

Short title.

1. This Act may be cited as The Companies Act, 1902.

APPLICATION OF ACT.

2. This Act applies to—

- (a) All companies incorporated under it;
- (b) All companies incorporated under the Companies Act, chapter 119 of the Revised Statutes, or to which that Act applied before the passing of this Act, except loan companies.

INTERPRETATION.

- Interpretation. 3. In this Act, and in all letters patent and supplementary letters patent issued under it, unless the context otherwise requires,—

"Company."

- (a) The expression "the company" or "a company" means any company to which this Act applies;

"Undertaking."

- (b) The expression "the undertaking" means the business of every kind which the company is authorized to carry on;

"Real estate."
"Land."

- (c) The expression "real estate" or "land" includes messuages, lands, tenements and hereditaments of any tenure, and all immovable property of any kind;

"Shareholder."

- (d) The expression "shareholder" means every subscriber to or holder of stock in the company, and includes the personal representatives of the shareholder;

"Manager."

- (e) The expression "manager" includes the cashier and the secretary.

PRELIMINARIES.

4. The provisions of this Act relating to matters preliminary to the issue of the letters patent or supplementary letters patent shall be deemed directory only, and no letters patent or supplementary letters patent issued under this Act shall be held void or voidable on account of any irregularity in respect of any matter preliminary to the issue of the letters patent or supplementary letters patent. Preliminaries.

FORMATION OF NEW COMPANIES.

5. The Secretary of State may, by letters patent under his seal of office, grant a charter to any number of persons not less than five, who apply therefor, constituting such persons, and others who have become subscribers to the memorandum of agreement hereinafter mentioned and who thereafter become shareholders in the company thereby created, a body corporate and politic, for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends, except the construction and working of railways or telegraph or telephone lines, or the business of banking and the issue of paper money, or the business of insurance, or the business of a loan company. Companies formed for certain purposes may be incorporated by letters patent.
Exception.

(2) The Governor in Council may from time to time designate the seal of office to be used by the Secretary of State as the seal under which letters patent may be granted under this Act. Seal.

6. The applicants for such letters patent, who must be of the full age of twenty-one years, shall file in the Department of the Secretary of State an application setting forth the following particulars:— Application for letters patent.

- (a) The proposed corporate name of the company, which shall not be that of any other known company, incorporated or unincorporated, or any name liable to be confounded therewith, or otherwise, on public grounds, objectionable; Name.
- (b) The purpose for which its incorporation is sought; Purposes.
- (c) The place within Canada which is to be its chief place of business; Chief place of business.
- (d) The proposed amount of its capital stock; Capital.
- (e) The number of shares and the amount of each share; Shares.

Names, etc., of applicants.

(f) The names in full and address and calling of each of the applicants, with special mention of the names of not more than fifteen, and not less than three of their number, who are to be the first or provisional directors of the company;

Stock taken and amount paid.

(g) The amount of stock taken by each applicant, the amount, if any, paid in upon the stock of each applicant, and the manner in which the same has been paid, and is held for the company.

7. The application may ask for the embodying in the letters patent of any provision which, under this Act, might be made by by-law of the company or by by-law of the directors approved by a vote of shareholders; and such provision so embodied shall not, unless provision to the contrary be made in the letters patent, be subject to repeal or alteration by by-law.

Memorandum of agreement.

The application shall be accompanied by a memorandum of agreement, in duplicate under seal, both of which may be similar to—and shall in their essential features conform to—the Forms A. and B. in the first schedule to this Act.

Proof of facts, etc.

Before the letters patent are issued, the applicants shall establish, to the satisfaction of the Secretary of State, the sufficiency of their application and memorandum of agreement and the truth and sufficiency of the facts therein set forth, and that the proposed name is not the name of any other known incorporated or unincorporated company, or any name likely to be confounded therewith; and for that purpose, the Secretary of State shall take and keep of record any requisite evidence in writing, by oath or affirmation or by solemn declaration.

Name not to be that of any other company.

Facts to be recited in letters patent.

8. The letters patent shall recite such of the established averments in the application and memorandum of agreement as to the Secretary of State seems expedient.

Minister may give another corporate name.

9. The Secretary of State may give to the company a corporate name, different to that proposed by the applicants if the proposed name is objectionable.

Notice of issue of letters patent.

10. Notice of the granting of the letters patent shall be forthwith given by the Secretary of State by two insertions in the Canada Gazette, in the form C. in the first schedule to this Act; and thereupon, from the date of the letters patent the persons therein named, and such persons as have become subscribers to the memorandum of agreement, or who there-

after become shareholders in the company, and their successors, shall be a body corporate and politic, by the name mentioned in the letters patent; and a copy of every such notice shall forthwith be, by the company to which such notice relates, inserted on four separate occasions in at least one newspaper in the county, city or place where the head office or chief agency is established. Incorporation.
Copies of notice to be published.

(2) If the company fails or neglects to cause such copy to be so inserted, it is guilty of an offence and liable under summary conviction before two justices of the peace to a penalty not exceeding twenty dollars for each day that such failure or neglect continues. Penalty.

PROVISIONS AS TO EXISTING COMPANIES.

11. Any company heretofore incorporated for any purpose or object for which letters patent may be issued under this Act, whether under a special or a general Act, and now being subsisting and valid corporation, may apply for letters patent to carry on its business under this Act, and the Secretary of State, with the approval of the Governor in Council, may direct the issue of letters patent incorporating the shareholders of the said company as a company under this Act; and thereupon all the rights and obligations of the former company shall be transferred to the new company, and all proceedings may be continued or commenced by or against the new company that might have been continued or commenced by or against the old company; and it shall not be necessary in any such letters patent to set out the names of the shareholders; and after the issue of the letters patent the company shall be governed in all respects by the provisions of this Act, except that the liability of the shareholders to creditors of the old company shall remain as at the time of the issue of the letters patent. Existing companies may apply for charters under this Act.
Effect of such charters.

12. If a subsisting company applies for the issue of letters patent under this Act, the Secretary of State may, by the letters patent, extend the powers of the company to such other objects for which letters patent may be issued under this Act as the applicant desires and as the Secretary of State thinks fit to include in the letters patent, and the Secretary of State may, in the said letters patent, name the first directors of the new company; and the letters patent may be issued to the new company by the name of the old company or by another name. Subsisting companies may apply for charters with extended powers.

Existing companies incorporated by the provinces of Canada, British companies and foreign companies may apply for charters under this Act.

13. Any company incorporated under any general or special Act of any of the Provinces of Canada, and any company duly incorporated under the laws of the United Kingdom or of any foreign country for any of the purposes or objects for which letters patent may be issued under this Act, and being at the time of the application a subsisting and valid corporation, may apply for letters patent under this Act, and the Secretary of State, upon receiving satisfactory evidence that the Act of incorporation or charter of the company so applying is valid and subsisting and that no public or private interest will be prejudiced, may issue letters patent incorporating the shareholders of the company so applying as a company under this Act, limiting, if necessary, the powers of the said company to such purposes or objects as might have been granted had the shareholders applied in the first instance to the Secretary of State for letters patent under this Act, and thereupon all rights and obligations of the former company shall be transferred to the new company, and all proceedings may be continued or commenced by or against the new company that might have been continued by or against the old company; and it shall not be necessary in any such letters patent to set out the names of the shareholders; and after the issue of the letters patent the company shall be governed in all respects by the provisions of this Act, except that the liability of the shareholders to creditors of the old company shall remain as at the time of the issue of the letters patent.

(2) Every company desirous of obtaining letters patent under this section shall first file in the office of the Secretary of State of Canada a certified copy of the charter or Act incorporating the company, and shall also designate the place in Canada where its principal office will be situated and the name of the agent or manager in Canada authorized to represent the company and to accept process in all suits and proceedings against the company for any liabilities incurred by the company therein.

(3) Every such company to which such letters patent have been granted, when so required, shall make a return to the Secretary of State of the names of its shareholders, the amount of its paid-up capital and the value of its real and personal estate held in Canada, and in default of making the said return within three months the letters patent may be cancelled.

(4) Notice of the issue of such letters patent shall be published in the Canada Gazette.

(5) The fees payable for such letters patent shall, from time to time, be fixed by the Governor in Council.

CHANGE OF NAME.

14. If it is made to appear, to the satisfaction of the Secretary of State that the name of a company (whether given by the original or by supplementary letters patent, or on amalgamation) is the same as the name of an existing incorporated or unincorporated company, or so similar thereto as to be liable to be confounded therewith, the Secretary of State may direct the issue of supplementary letters patent, reciting the former letters and changing the name of the company to some other name which shall be set forth in the supplementary letters patent.

Minister may change name by supplementary letters patent.

15. When a company is desirous of adopting another name, the Secretary of State, upon being satisfied that the change desired is not for any improper purpose, may direct the issue of supplementary letters patent, reciting the former letters patent, and changing the name of the company to some other name, which shall be set forth in the supplementary letters patent.

Company may obtain change of name.

Change not to affect rights or obligations.

16. No alteration of its name under the two sections next preceding shall effect the rights or obligations of the company; and all proceedings may be continued or commenced by or against the company under its new name that might have been continued or commenced by or against the company under its former name.

FEEs.

17. The Governor in Council may, from time to time, establish, alter and regulate the tariff of the fees to be paid on application for letters patent and supplementary letters patent under this Act, and may prescribe the forms of proceeding and registration in respect thereof, and all other matters requisite for carrying out the objects of this Act.

Fees on letters patent, etc., to be fixed by Governor in Council.

(2) The amount of the fees may be varied according to the nature of the company, the amount of the capital stock and other particulars as the Governor in Council thinks fit;

Amount of fees may be varied.

Must be paid
before action is
taken.

(3) No steps shall be taken in the Department of the Secretary of State towards the issue of any letters patent or supplementary letters patent under this Act, until after all fees therefor are duly paid.

COMMENCEMENT OF BUSINESS.

Ten per cent.
of capital to be
paid.

18. The company shall not commence its operations or incur any liability before ten per centum of its authorized capital has been subscribed and paid for. Every director who expressly or impliedly authorizes such operations being so commenced or liabilities being so incurred shall be jointly and severally liable with the company for the payment of such liabilities.

Liabilities of
directors for
contravention.

FORFEITURE OF CHARTER.

Forfeiture of
charter for
non-user.

19. The charter of the company shall be forfeited by non-user during three consecutive years, or if the company does not go into actual operation within three years after it is granted.

GENERAL POWERS AND DUTIES OF THE COMPANY.

Powers given
to be subject to
this Act.

20. All powers given to the company by the letters patent or supplementary letters patent shall be exercised subject to the provisions and restrictions contained in this Act.

General corpo-
rate powers.

21. The company may acquire, hold, mortgage, sell and convey any real estate requisite for the carrying on of the undertaking of the company, and shall, if incorporated under this Act, forthwith become and be invested with all property and rights, real and personal, theretofore held by it or for it under any trust created with a view to its incorporation, and with all the powers, privileges and immunities requisite or incidental to the carrying on of its undertaking, as if it was incorporated by a special Act of Parliament, embodying the provisions of this Act and of the letters patent.

Offices and
agencies of the
company in
Canada.

22. The company shall, at all times, have an office in the city or town, in which its chief place of business in Canada is situate, which shall be the legal domicile of the company in Canada; and notice of the situation of such office and of any change therein shall be published in the Canada Gazette; and the company may establish such other offices and agencies elsewhere as it deems expedient.

And elsewhere.

Acts of Com-
pany's attorney
valid.

23. Every deed which any person, lawfully empowered in that behalf by the company as its attorney, signs on behalf of

the company, and seals with his seal, shall be binding on the company and shall have the same effect as if it was under the seal of the company.

24. Every contract, agreement or bargain made, and every bill of exchange drawn, accepted or indorsed, and every promissory note and cheque made, drawn or indorsed on behalf of the company, by any agent, officer or servant of the company, in general accordance with his powers as such under the by-laws of the company, shall be binding upon the company; and in no case shall it be necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note or cheque, or to prove that the same was made, drawn, accepted or indorsed, as the case may be, in pursuance of any by-law or special vote or order; and the person so acting as agent, officer or servant of the company shall not be thereby subjected individually to any liability whatsoever to any third person therefor: Provided always, that nothing in this Act shall be construed to authorize the company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money, or as the note of a bank, or to engage in the business of banking or insurance.

Contracts, etc., when to be binding on company.

No individual liability.

Proviso: as to bank notes.

25. The company shall keep its name, with the word "limited" after the name, painted or affixed, in letters easily legible, in a conspicuous position on the outside of every office or place in which the business of the company is carried on, and shall have its name, with the said word after it, engraven in legible characters on its seal, and shall have its name with the said word after it, mentioned in legible characters, in all notices, advertisements, and other official publications of the company and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods, purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices and receipts of the company:

Use of word "Limited."

(2) Every company which does not keep painted or affixed, its name with the word "limited" after it, in manner directed by this Act, shall incur a penalty of twenty dollars for every day during which such name is not kept so painted or affixed:

Penalty for violation of preceding section.

(3) Every director and manager of the company, who knowingly and wilfully authorizes or permits such default, shall be liable to the like penalty:

Penalty for permitting violation.

Penalty on directors or officers using or authorizing use of seal without "limited" on it.

(4) Every director, manager or officer of the company, and every person on its behalf, who uses or authorizes the use of any seal purporting to be a seal of the company, whereon its name, with the said word "limited" after it, is not so engraven as aforesaid, or who issues, or authorizes the issue of any notice, advertisement or other official publication of such company, or who signs or authorizes to be signed on behalf of such company any bill of exchange, promissory note, indorsement, cheque, order for money or goods, or who issues or authorizes to be issued any bill of parcels, invoice or receipt of the company, wherein its name, with the said word after it, is not mentioned in manner aforesaid, shall incur a penalty of two hundred dollars, and shall also be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Liability in addition.

OBTAINING OF FURTHER POWERS.

Company may authorize directors to apply for extension of powers.

26. The company may, from time to time, by a resolution passed by the votes of shareholders representing at least two-thirds in value of the subscribed stock of the company, at a special general meeting called for the purpose, authorize the directors to apply for supplementary letters patent, extending the powers of the company to such other purposes or objects, for which a company may be incorporated under this Act, as are defined in the resolution.

Application by directors.

27. The directors may, at any time within six months after the passing of any such resolution, make application to the Secretary of State, for the issue of such supplementary letters patent.

Proof to be furnished to Secretary of State.

28. Before such supplementary letters patent are issued, the applicants shall establish to the satisfaction of the Secretary of State the due passing of the resolution authorizing the application, and for that purpose the Secretary of State shall take and keep of record any requisite evidence in writing, by oath or affirmation, or by statutory declaration under the Canada Evidence Act, 1893.

Grant of supplementary letters patent.

29. Upon due proof so made, the Secretary of State may grant supplementary letters patent extending the powers of the company to all or any of the objects defined in the reso-

lution; and notice thereof shall be forthwith given by the Secretary of State, in the Canada Gazette, in the form D. in the first schedule to this Act; and, thereupon from the date of the supplementary letters patent, the undertaking of the company shall extend to and include the other purposes or objects set out in the supplementary letters patent as fully as if such other purposes or objects were mentioned in the original letters patent; and a copy of every notice shall forthwith be, by the company to which the notice relates, inserted on four separate occasions in at least one newspaper in the county, city or place where the head office or chief agency is established.

Notices of issue thereof.

(2) If the company fails or neglects to cause such copy to be inserted, it is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding twenty dollars for each day that such failure or neglect continues.

Penalty.

LIABILITY OF SHAREHOLDERS.

30. The shareholders of the company shall not, as such, be responsible for any act, default or liability of the company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing relating to or connected with the company, beyond the amount unpaid on their respective shares in the capital stock thereof.

Liability limited to amount unpaid on stock.

31. Every shareholder, until the whole amount of his shares has been paid up, shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon; but he shall not be liable to any action therefor by any creditor until an execution at the suit of such creditor against the company has been returned unsatisfied in whole or in part; and the amount due on such execution, not exceeding the amount unpaid on his shares, as aforesaid, shall be the amount recoverable, with costs, from such shareholder; and any amount so recoverable, if paid by the shareholder shall be considered as paid on his shares.

Liability of shareholders. When to accrue.

(2) Any shareholder may plead by way of defence in whole or in part any set-off which he can set up against the company, except a claim for unpaid dividends, or a salary or allowance as a president or director of the company.

Trustees, etc.,
not personally
liable.

32. No person, holding stock in the company as an executor, administrator, tutor, curator, guardian or trustee of or for any person named in the books of the company as being so represented by him, shall be personally subject to liability as a shareholder; but the estate or funds in the hands of such person shall be liable in like manner, and to the same extent, as the testator or intestate, or the minor, ward or interdicted person, or the person interested in such trust fund would be, if living and competent to act and holding such stock in his own name; and no person holding such stock as collateral security shall be personally subject to such liability, but the person pledging such stock shall be considered as holding the same and shall be liable as a shareholder accordingly.

Trustees, etc.
entitled to
vote.

33. Every such executor, administrator, curator, guardian or trustee, shall represent the stock held by him, at all meetings of the company, and may vote as a shareholder; and every person who pledges his stock may represent the same at all such meetings and, notwithstanding such pledge, vote as a shareholder.

PROSPECTUS, ETC.

Prospectus,
etc., to specify
certain con-
tracts entered
into by com-
pany, or be
deemed
fraudulent.

34. Every prospectus of the company, and every notice inviting persons to subscribe for shares in the company, shall specify the dates and the names of the persons to any contract entered into by the company or the promoters, directors or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company or otherwise; and every prospectus or notice which does not specify the same shall, with respect to any person who takes shares in the company on the faith of such prospectus or notice, and who has not had notice of such contract, be deemed fraudulent on the part of the promoters, directors or officers of the company who knowingly issue such prospectus or notice.

HOLDING STOCK OF OTHER COMPANIES.

Conditions for
purchase of
stock of other
companies.

35. The company shall not under any circumstances use any of its funds in the purchase of stock in any other corporation, unless and until the directors have been expressly authorized by a by-law passed by them for the purpose and sanctioned by a vote of not less than two-thirds in value of the capital stock represented at a general meeting of the company

duly called for considering the subject of the by-law; provided always that if the letters patent authorize such purchase, it shall not be necessary to pass such by-law.

CAPITAL STOCK.

36. The stock of the company shall be personal estate, and shall be transferable, in such manner, and subject to all such conditions and restrictions as are prescribed by this Act or by the letters patent or by by-laws of the company.

Stock to be personal estate.

37. If the letters patent, or the supplementary letters patent, make no other definite provision, the stock of the company, or any increased amount thereof, so far as it is not allotted thereby, shall be allotted at such times and in such manner as the directors prescribe by by-law.

Allotment of stock.

38. The directors of the company may make a by-law for creating and issuing any part of the capital stock as preference stock, giving the same such preference and priority, as respects dividends and in any other respect, over ordinary stock as is declared by the by-law.

Preference stock.

(2) The by-law may provide that the holders of shares of such preference stock shall have the right to select a certain stated proportion of the board of directors, or may give them such other control over the affairs of the company as is considered expedient.

Effect as to control of affairs.

(3) No such by-law shall have any force or effect whatever until after it has been sanctioned by a vote of three-fourths of the shareholders, present in person or by proxy at a general meeting of the company duly called for considering the same and representing two-thirds of the stock of the company, or unanimously sanctioned in writing by the shareholders of the company.

Conditions for effect of by-law creating preference stock.

(4) Holders of shares of such preference stock shall be shareholders within the meaning of this Act, and shall in all respects possess the rights and be subject to the liabilities of shareholders within the meaning of this Act; provided, however, that in respect of dividends and in any other respect declared by by-law as authorized herein, they shall, as against the ordinary shareholders, be entitled to the preferences and rights given by such by-law.

Rights of holders of preference stock.

Company not bound to see to execution of trusts.

39. The company shall not be bound to see to the execution of any trust, whether express, implied or constructive, in respect of any share; and the receipt of the shareholder in whose name the same stands in the books of the company, shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share, and whether or not notice of such trust has been given to the company; and the company shall not be bound to see to the application of the money paid upon such receipt.

INCREASE OR REDUCTION OF CAPITAL, ETC.

Sub-division of shares.

40. The directors of the company may, at any time, make a by-law subdividing the existing shares into shares of a smaller amount.

Increase of capital.

41. The directors of the company may, at any time after ninety per cent. of the capital stock of the company has been taken up and fifty per cent. thereon paid in, make a by-law for increasing the capital stock of the company to any amount which they consider requisite for the due carrying out of the objects of the company;

By-law for that purpose.

(2) Such by-law shall declare the number of the shares of the new stock, and may prescribe the manner in which the same shall be allotted; and in default of its so doing, the control of such allotment shall vest absolutely in the directors.

Reduction of capital.

42. The directors of the company may, at any time, make a by-law for reducing the capital stock of the company to any amount which they consider advisable and sufficient for the due carrying out of the undertaking of the company;

By-law for that purpose.

(2) Such by-law shall declare the number and value of the shares of the stock as so reduced, and the allotment thereof, or the manner in which the same shall be made;

Liability to creditors not affected.

(3) The liability of shareholders to persons who were, at the time of the reduction of the capital, creditors of the company, shall remain the same as if the capital had not been reduced.

Such by-law to be approved by shareholders and confirmed by supplementary letters patent.

43. No by-law for increasing or reducing the capital stock of the company, or for subdividing the shares, shall have any force or effect whatsoever, until it is approved by the votes of shareholders representing at least two-thirds in value of all the subscribed stock of the company, at a special general

meeting of the company duly called for considering the same, and afterwards confirmed by supplementary letters patent.

44. At any time, not more than six months after such sanction of such by-law, the directors may apply to the Secretary of State, for the issue of supplementary letters patent to confirm the same : Application for supplementary letters patent to confirm by-law.

(2) The directors shall, with such application, produce a copy of such by-law, under the seal of the company, and signed by the president or vice-president and the secretary, and establish to the satisfaction of the Secretary of State, the due passage and approval of such by-law, and the expediency and bona fide character of the increase or reduction of capital or subdivision of shares, as the case may be, thereby provided for : By-law, etc., to be produced with petition.

(3) The Secretary of State shall, for that purpose, take and keep of record any requisite evidence in writing, by oath or affirmation or by solemn declaration, as above mentioned. Evidence may be taken and kept by Secretary of State.

45. Upon due proof so made, the Secretary of State may grant such supplementary letters patent; and notice thereof shall be given by the Secretary of State in the Canada Gazette, in the form E. in the first schedule to this Act; and thereupon, from the date of the supplementary letters patent, the capital stock of the company shall be and remain increased or reduced, or the shares shall be subdivided, as the case may be, to the amount, in the manner and subject to the conditions set forth by such by-law; and the whole of the stock, as so increased or reduced, shall become subject to the provisions of this Act, in like manner, as far as possible, as if every part thereof had been or formed part of the stock of the company originally subscribed. Granting of supplementary letters patent; notice; effect of such letters patent.

45a. The directors of the company may, at any time, whenever the par value of the existing shares of the company is less than one hundred dollars each, make a by-law consolidating them into shares of a larger par value; but no such consolidated share shall exceed the par value of one hundred dollars. Consolidation of small shares into larger ones.

(2) For the purpose of such consolidation, the company shall have the power to purchase fractions of shares, and the company shall be bound to sell any shares held by them within a delay of two years. Retroactive effect.

CALLS.

Calling in of
moneys un-
paid on
shares.

46. Not less than ten per centum upon the allotted shares of stock of the company shall, by means of one or more calls formally made, be called in and made payable within one year from the incorporation of the company; the residue when and as the letters patent, or the provisions of this Act, or the by-laws of the company direct.

Interest on
calls overdue.

47. A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed; and if a shareholder fails to pay any call due by him, on or before the day appointed for the payment thereof, he shall be liable to pay interest for the same, at the rate of six per cent. per annum, from the day appointed for payment to the time of actual payment thereof.

Payment in
advance on
shares.

48. The directors may, if they think fit, receive from any shareholder willing to advance the same, all or any part of the amount due on the shares held by such shareholder, beyond the sums then actually called for; and upon the moneys so paid in advance, or so much thereof as, from time to time, exceeds the amount of the calls then made upon the shares in respect of which such advance is made, the company may pay interest at such rate, not exceeding eight per cent. per annum, as the shareholder who pays such sum in advance and the directors agree upon.

Interest may
be allowed.

Forfeiture of
shares for non-
payment of
calls.

49. If, after such demand or notice as is prescribed by the letters patent, or by resolution of the directors, or by the by-laws of the company, any call made upon any share is not paid within such time as, by such letters patent or by resolution of the directors or by the by-laws, is limited in that behalf, the directors, in their discretion, by vote to that effect, duly recorded in their minutes, may summarily declare forfeited any shares whereon such payment is not made; and the same shall thereupon become the property of the company and may be disposed of as, by the by-laws of the company or otherwise, they prescribe; but, notwithstanding such forfeiture, the holder of such shares at the time of forfeiture shall continue liable to the then creditors of the company for the full amount unpaid on such shares at the time of forfeiture, less any sums which are subsequently received by the company in respect thereof.

Proviso;
liability of
holders con-
tinued.

50. The directors may, if they see fit, instead of declaring forfeited any share or shares, enforce payment of all calls, and interest thereon, by action in any court of competent jurisdiction; and in such action it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount, in respect of one call or more, upon one share or more, stating the number of calls and the amount of each call, whereby an action has accrued to the company under this Act.

Enforcement of payment of calls by action.

What only need be alleged and proved.

TRANSFER OF SHARES.

51. No transfer of shares, unless made by sale under execution, or under the decree, order or judgment of a court of competent jurisdiction, shall be valid for any purpose whatever, until entry thereof is duly made in the register of transfers, except for the purpose of exhibiting the rights of the parties thereto towards each other, and of rendering the transferee liable, in the meantime, jointly and severally, with the transferor, to the company and its creditors.

Transfer of shares valid only after entry.

(2) This section shall not apply to companies whose stock is listed and dealt with on any recognized stock exchange by means of scrip commonly in use, indorsed in blank, and transferable by delivery, which shall constitute valid transfers; the scrip holder shall not, however, be entitled to vote upon the shares until they are registered in his name in the books of the company.

Exceptions as to stock exchange dealing by scrip.

52. No transfer of shares, whereof the whole amount has not been paid in, shall be made without the consent of the directors; and whenever any transfer of shares not fully paid in has been made with such consent, to a person who is not of apparently sufficient means to fully pay up such shares, the directors shall be jointly and severally liable to the creditors of the company, in the same manner and to the same extent as the transferring shareholder, but for such transfer, would have been; but if any director present when any such transfer is allowed does not forthwith, or if any director then absent does, within twenty-four hours after he becomes aware thereof and is able to do so, enter on the minute book of the board of directors his protest against the same, and within eight

Liabilities of directors as regards transfers of shares in certain cases.

How only a director may avoid liability.

days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper there published, then in the newspaper published nearest thereto, such director may, thereby, and not otherwise, exonerate himself from such liability.

Provision when shares are transmitted otherwise than by transfer.

Order of court may be obtained on petition.

53. Whenever the interest in any shares of the capital stock of the company is transmitted by the death of any shareholder or otherwise, or whenever the ownership of or legal right of possession in any shares changes by any lawful means, other than by transfer according to the provisions of this Act, and the directors of the company entertain reasonable doubts as to the legality of any claim to such shares, the company may make and file, in one of the superior courts in the Province in which the head office of the company is situated, a declaration and petition in writing, addressed to the justices of the court, setting forth the facts and the number of shares previously belonging to the person in whose name such shares stand in the books of the company, and praying for an order or judgment adjudicating and awarding the said shares to the person or persons legally entitled to the same,—by which order or judgment the company shall be guided and held fully harmless and indemnified and released from every other claim to the said shares or arising in respect thereof.

Notice of petition.

(2) Notice of the intention to present such petition shall be given to the person claiming such shares, or to the attorney of such person duly authorized for the purpose, who shall, upon the filing of such petition, establish his right to the shares referred to in such petition; and the time to plead and all other proceedings in such cases shall be the same as those observed in analogous cases before the said superior courts; Provided always, that the costs and expenses of procuring such order or judgment shall be paid by the person or persons to whom such shares are declared lawfully to belong; and that such shares shall not be transferred in the books of the company until such costs and expenses are paid,—saving the recourse of such person against any person contesting his right to such shares.

Proviso: as to costs.

Restriction as to transfer.

54. No share shall be transferable until all previous calls thereon are fully paid in.

55. The directors may decline to register any transfer of shares belonging to any shareholder who is indebted to the company. As to transfer by debtor to the company.

56. Any transfer of the shares or other interest of a deceased shareholder, made by his personal representative, shall, notwithstanding such personal representative is not himself a shareholder, be of the same validity as if he had been a shareholder at the time of his execution of the instrument of transfer. Transfer by personal representative.

BORROWING POWERS.

57. If authorized by by-law, sanctioned by a vote of not less than two-thirds in value of the subscribed stock of the company represented at a general meeting duly called for considering the by-law, the directors may from time to time,—

(a) Borrow money upon the credit of the company; Borrowing.

(b) Limit or increase the amount to be borrowed;

(c) Issue bonds, debentures or other securities of the company and pledge or sell the same for such sums and at such prices as may be deemed expedient; but no such bonds, debentures or other securities shall be for a less sum than one hundred dollars each. Issue of bonds, etc.

(d) Hypothecate, mortgage, or pledge the real or personal property of the company, or both, to secure any such bonds, debentures or other securities and any money borrowed for the purposes of the company. Security.

(2) The limitations and restrictions contained in this section shall not apply to the borrowing of money by the company on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the company.

DIVIDENDS.

58. No dividend shall be declared which will impair the capital of the company. Dividend not to impair capital.

59. The directors may deduct from the dividends payable to any shareholder all such sums of money as are due from him to the company, on account of calls or otherwise. Debts to company may be deducted from dividends.

DIRECTORS.

60. The affairs of the company shall be managed by a board of not more than fifteen and not less than three directors. a Board of directors.

Provisional
directors.

61. The persons named as such, in the letters patent, shall be the directors of the company, until replaced by others duly appointed in their stead.

Failure to elect
directors how
remedied.

62. If, at any time, an election of directors is not made, or does not take effect at the proper time, the company shall not be held to be thereby dissolved; but such election may take place at any subsequent general meeting of the company duly called for that purpose; and the retiring directors shall continue in office until their successors are elected.

Qualifications
of subsequent
directors.

63. No person shall be elected or appointed as a director thereafter unless he is a shareholder, owning stock absolutely in his own right, and to the amount required by the by-laws of the company, and not in arrear in respect of any call thereon.

By-law for
increase or
decrease of
number of
directors.

64. The company may, by by-law, increase to not more than fifteen, or decrease to not less than three, the number of its directors, or may change the company's chief place of business in Canada; but no by-law for either of the said purposes shall be valid or acted upon unless it is approved by a vote of at least two-thirds in value of the stock represented by the shareholders present at a special general meeting duly called for considering the by-law; nor until a copy of such by-law certified under the seal of the company, has been deposited with the Secretary of State, and has also been published in the Canada Gazette.

When to be
valid.

Election of
directors.

65. The directors of the company shall be elected by the shareholders of the company in general meeting of the company assembled at some place within Canada—at such times, in such manner and for such term, not exceeding two years, as the letters patent, or in default thereof, as the by-laws of the company prescribe.

Mode and
times of
election.

66. In the absence of other provisions in such behalf, in the letters patent or by-laws of the company,—

Yearly.

(a) The election of directors shall take place yearly, and all the directors then in office shall retire, but, if otherwise qualified, they shall be eligible for re-election;

Ballot.

(b) Every election of directors shall be by ballot;

- (c) Any vacancy occurring in the board of directors may ^{Vacancies, how filled.} be filled, for the remainder of the term, by the directors from among the qualified shareholders of the company;
- (d) The directors shall, from time to time, elect from ^{President, vice-president and officers.} among themselves a president and, if they see fit, a vice-president of the company; and may also appoint all other officers thereof.

67. Every director of the company, and his heirs, executors and administrators, and estate and effects, respectively, may, ^{Directors indemnified in suits, etc., against the company.} with the consent of the company, given at any general meeting thereof, from time to time, and at all times, be indemnified and saved harmless out of the funds of the company, from and against all costs, charges and expenses whatsoever which he sustains or incurs in or about any action, suit or proceeding which is brought, commenced or prosecuted against him for or in respect of any act, deed, matter or thing whatsoever, made, done or committed by him, in or about the execution of the duties of his office; and also from and against all other costs, charges and expenses which he sustains or incurs, in or about or in relation to the affairs thereof,—except such costs, charges, or expenses as are occasioned by his own wil- ^{Except for their own neglect or default.} ful neglect or default.

POWERS OF DIRECTORS.

68. The directors of the company may administer the af- ^{Powers and duties of directors.} fairs of the company in all things, may make or cause to be made for the company, any description or contract which the company may, by law enter into; and may, from time to time, make by-laws not contrary to law, or to the letters patent of the company, or to this Act, for the following purposes:—

- (a) The regulating of the allotment of stock, and making ^{Stock.} of calls thereon, payment thereof, the issue and registration of certificates of stock, the forfeiture of stock for non-payment, the disposal of forfeited stock and of the proceeds thereof, and the transfer of stock;
- (b) The declaration and payment of dividends; ^{Dividends.}
- (c) The number of the directors, their term of service, ^{Number, etc., of directors.} the amount of their stock qualification, and their remuneration, if any;

Agents and
officers.

(d) The appointment, functions, duties and removal of all agents, officers and servants of the company, the security to be given by them to the company and their remuneration;

Meetings.

(e) Time and place for the holding of the annual meetings of the company, calling of meetings, regular and special, of the board of directors and of the company, the quorum, the requirements as to proxies and the procedure in all things at such meetings;

Penalties.

(f) The imposition and recovery of all penalties and forfeitures which admit of regulation by by-law;

General
powers.

(g) The conduct, in all other particulars, of the affairs of the company;

Confirmation
of by-laws.

(2) Directors may, from time to time, repeal, amend or re-enact such by-laws; but every such by-law (except by-laws made respecting the matters set forth in paragraph (d), subsection 1 of this section) and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the company duly called for that purpose, shall only have force until the next annual meeting of the company, and in default of confirmation thereat, shall, at and from that time only, cease to have force.

LIABILITY OF DIRECTORS AND OFFICERS.

Liability of
directors
declaring a
dividend when
company is
insolvent, etc.

69. If the directors of the company declare and pay any dividends when the company is insolvent, or any dividend, payment of which renders the company insolvent, or impairs the capital thereof, they shall be jointly and severally liable, as well to the company as to the individual shareholders and creditors thereof, for all the debts of the company then existing, and for all thereafter contracted, during their continuance in office, respectively; but if any director present when such dividend is declared does forthwith, or if any director then absent does, within twenty-four hours after he becomes aware thereof and able so to do, enter on the minutes of the board of directors his protest against the same, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper there published, then in the newspaper

How directors
may avoid
such liability.

published nearest thereto such director may thereby, and not otherwise, exonerate himself from such liability.

70. No loan shall be made by the company to any shareholder; if any such loan is made, all directors and other officers of the company making the same, or in any wise assenting thereto, shall be jointly and severally liable for the amount of such loan, with interest, to the company,—and also to the creditors of the company for all debts of the company then existing, or contracted between the time of the making of such loan and that of the repayment thereof.

No loan by company to shareholders.

71. The directors of the company shall be jointly and severally liable to the clerks, laborers, servants and apprentices thereof, for all debts not exceeding six months' wages due for service performed for the company whilst they are such directors respectively; but no director shall be liable to any action therefor, unless the company is sued therefor within one year after the debt becomes due, or unless director is sued therefor within one year from the time when he ceased to be such director, nor unless an execution against the company in respect of such debt is returned unsatisfied in whole or in part; and the amount unsatisfied on such execution shall be the amount recoverable with costs from the directors.

Liability of directors for wages.
Limitation of suits, etc.

GENERAL MEETINGS.

72. Shareholders who hold one-fourth part of the subscribed stock of the company may, at any time, call a special meeting thereof for the transaction of any business specified in such written requisition and notice as they make and issue to that effect.

Special general meetings.

73. In the absence of other provisions in such behalf in the letters patent or by-laws of the company,—

- (a) Notice of the time and place for holding a general meeting of the company shall be given at least fourteen days previously thereto, in some newspaper published in the place where the head office or chief place of business of the company is situate, or if there is no such newspaper, then in the place nearest thereto in which a newspaper is published;
- Notice

| | |
|--------------------------------|--|
| Votes. | (b) At all general meetings of the company, every shareholder shall be entitled to give one vote for each share then held by him; such votes may be given in person or by proxy—the holder of any such proxy being himself a shareholder; but no shareholder shall be entitled, either in person or by proxy, to vote at any meeting unless he has paid all the calls then payable on all the shares held by him; all questions proposed for the consideration of the shareholders shall be determined by the majority of votes,—the chairman presiding at such meeting having the casting vote in case of an equality of votes. |
| Proxies. | |
| All calls must have been paid. | |
| Majority to decide. | |
| Casting vote. | |

BOOKS OF THE COMPANY.

| | |
|--|--|
| Book to be kept and what to contain. | 74. The company shall cause a book or books to be kept by the secretary, or by some other officer specially charged with that duty, wherein shall be kept recorded,— |
| Copy of letters patent, by-laws, etc. | (a) A copy of the letters patent incorporating the company, and of any supplementary letters patent, and of the preliminary memorandum of agreement and of all by-laws thereof; |
| Names of shareholders | (b) The names, alphabetically arranged, of all persons who are or have been shareholders; |
| Addresses. | (c) The address and calling of every such person, while such shareholder, as far as can be ascertained; |
| Number of shares. | (d) Number of shares of stock held by each shareholder; |
| Amounts paid, etc. | (e) The amounts paid in and remaining unpaid, respectively, on the stock of each shareholder; |
| Names, etc. of directors. | (f) The names, addresses and calling of all persons who are or have been directors of the company, with the several dates at which each became or ceased to be such director. |
| Register of transfers. | (2) A book called the register of transfers shall be provided, and in such book shall be entered the particulars of every transfer of shares in the capital of the company. |
| Books to be open for inspection and taking extracts therefrom. | 75. Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open, at the head office or chief place of business of the company, for the inspection of shareholders and creditors of the company, and their personal representatives, and of any judgment creditor of a shareholder; and every such shareholder, creditor or personal representative may make extracts therefrom. |

76. Every director, officer or servant of the company, who knowingly makes or assists in making any untrue entry in any such book, or who refuses or wilfully neglects to make any proper entry therein, or to exhibit the same, or to allow the same to be inspected and extracts to be taken therefrom, is guilty of an indictable offence. Penalty for false entries, refusal to allow inspection, etc.

77. Every company which neglects to keep such book or books as aforesaid, shall be guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding twenty dollars for each day that such neglect continues. Forfeiture for neglect.

78. Such books shall be prima facie evidence of all facts purporting to be thereby stated, in any action, suit or proceeding against the company or against any shareholder. Books to be prima facie evidence.

INSPECTION.

79. Upon the application of shareholders representing not less than one-fourth in value of the issued capital stock of the company a judge in the Province in which the chief place of business of the company is situated may, if he deems it necessary, appoint a competent inspector to investigate the affairs and management of the company. The application shall be supported by such evidence as the judges may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same. The inspector shall report to the judge the result of the investigation. The expense of such investigation shall, in the discretion of the judge, be defrayed by the company, or by the applicants, or partly by the company and partly by the applicants as he may order, and, if he thinks fit, he may require the applicants to give security to cover the probable cost of the investigation, and he may make necessary rules and prescribe the manner in which and the extent to which the investigation shall be conducted, or the judge may, if he deems it necessary, examine the officers or directors of the company under oath as to matters that come in question. Application for judicial inspection of affairs. Inspector. Report. Cost. Manner.

(2) The company may by resolution passed at the annual meeting, or a special general meeting called for the purpose, appoint an inspector to examine into the affairs of the company. The inspector so appointed shall have the same powers Inspection by order of the company.

Report in
such case.

and perform the same duties as an inspector appointed by the judge, with this exception, that instead of making his report to the judge he shall make the same in such manner and to such persons as the company by said resolution directs.

Duties of
officers.

(3) It shall be the duty of all officers and agents of the company to produce for the examination of any such inspector all books and documents in their custody or power. Any such inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding twenty dollars in respect of each offence.

Powers of
inspector.

Penalty for
refusal.

Meaning^{of}
expression
"judge."

(4) In this section the expression "judge" means in Ontario a judge of the High Court of Justice; in Quebec it means a judge of the Superior Court in and for that Province; in Nova Scotia, New Brunswick and British Columbia, it means a judge of the Supreme Court in and for each of those Provinces respectively; in Manitoba it means a judge of His Majesty's Court of King's Bench for Manitoba; in Prince Edward Island it means a judge of the Supreme Court of Judicature; in the North-West Territories it means a judge of the Supreme Court of the North-West Territories; in the Yukon Territory it means a judge of the Territorial Court.

SERVICE OF PROCESS, ETC.

Service of
process on the
company.

80. Any summons, notice, order or other process or document required to be served upon the company, may be served by leaving the same at the office in the city or town in which its chief place of business in Canada is situate, with any adult person in the employ of the company, or on the president or secretary of the company, or by leaving the same at the domicile of either of them, or with any adult person of his family or in his employ; or if the company has no known office or chief place of business, and has no known president or secretary, the court may order such publication as it deems requisite to be made in the premises; such publication shall be held to be due service upon the company.

Use of common
seal dispensed
with in cer-
tain cases.

81. Any summons, notice, order or proceeding requiring authentication by the company may be signed by any director,

manager or other authorized officer of the company, and need not be under the seal of the company.

82. Notices to be served by the company upon the shareholders may be served either personally or by sending them through the post, in registered letters, addressed to the shareholders at their places of abode as appear on the books of the company. Service of notices upon members.

83. A notice or other document served by post by the company on a shareholder, shall be held to be served at the time when the registered letter containing it would be delivered in the ordinary course of post; and to prove the fact and time of service it shall be sufficient to prove that such letter was properly addressed and registered and was put into the post office, and the time when it was put in, and the time requisite for its delivery in the ordinary course of post. Service of notice by post.

84. A copy of any by-law of the company, under its seal, and purporting to be signed by any officer of the company, shall be received as against any shareholder of the company, as prima facie evidence of such by-law in all courts in Canada. Evidence of by-laws.

85. Any description of action may be prosecuted and maintained between the company and any shareholder thereof; and no shareholder shall, by reason of being a shareholder, be incompetent as a witness therein. Actions between company and shareholders.

86. In any action or other legal proceeding, it shall not be requisite to set forth the mode of incorporation of the company, otherwise than by mention of it under its corporate name, as incorporated by virtue of letters patent—or of letters patent and supplementary letters patent, as the case may be—under this Act; and the notice in the Canada Gazette, of the issue of such letters patent or supplementary letters patent, shall be prima facie proof of all things therein contained; and on production of the letters patent, or supplementary letters patent, or of any exemplification or copy thereof, the fact of such notice shall be presumed; and, except in any proceeding by *scire facias* or otherwise for the purpose of rescinding or annulling the same, the letters patent or supplementary letters patent, or any exemplification or copy thereof, shall be conclusive proof of every matter and thing therein set forth. Mode of incorporation, etc., how to be set forth in legal proceedings.

87. Proof of any matter which is necessary to be made under this Act may be made by oath or affirmation, or by solemn declaration, before any justice of the peace, or any com- Proof may be by declaration or by affidavit.

missioner for taking affidavits, to be used in any of the courts in any of the Provinces of Canada, or any notary public, each of whom is hereby authorized and empowered to administer oaths and to receive affidavits and declarations for that purpose.

STATEMENTS AND RETURNS.

Full statement
of affairs at
each meeting
for elections.

88. The directors of every company shall lay before its shareholders annually a fully printed statement of the affairs and financial position of the company at or before each general meeting of the company for the election of directors.

Return to be
made.

89. It shall be the duty of the company to make a return to the Secretary of State at any time a written request may be made therefor, containing the following particulars:—

(1) The amount of the capital of the company, and the number of shares into which it is divided.

(2) The number of shares taken from the commencement of the company up to the date of the summary.

(3) The amount of calls made on each share.

(4) The total amount of calls received.

(5) The total amount of calls unpaid.

(6) The total amount of shares forfeited.

(7) The names, addresses and occupations of the persons who have ceased to be members within the twelve months preceding, and the number of shares held by each of them.

Penalty for
default as to
return.

If any company for a space of one month neglects or refuses to comply with such request the company shall incur a penalty not exceeding twenty dollars for every day during which such default continues; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

REPEAL.

Acts repealed.

90. The Acts mentioned in the second schedule to this Act are hereby repealed to the extent specified in the third column of that schedule, except in so far as they apply to loan companies incorporated or formed, under the provisions of the Companies Act, before the eleventh day of August, 1899.

Savings as to
certain loan
companies.
R.S.C., c. 119,
and 1899, c. 41,
s. 46.

FIRST SCHEDULE.

Form A.

(Section 7.)

FORM OF APPLICATION FOR INCORPORATION UNDER THE DOMINION COMPANIES ACT, 1902.

To the Honorable the Secretary of State for Canada :

The application of

 respectfully sheweth as follows :—

The undersigned applicants are desirous of obtaining letters patent under the provisions of The Companies Act, 1902, constituting your applicants and such others as may become shareholders in the company thereby created a body corporate and politic under the name of
 "Limited,"
 or such other name as shall appear to you to be proper in the premises.

The undersigned have satisfied themselves and are assured that the proposed corporate name of the company under which incorporation is sought is not the corporate name of any other known company incorporated or unincorporated or any name liable to be confounded therewith or otherwise on public grounds objectionable.

Your applicants are of the full age of 21 years.

The purposes for which incorporation is sought by the applicants are :

The chief place of business of the proposed company within Canada will be at in the Province of

The amount of the capital stock of the company is to be \$.....

The said stock is to be divided into shares of \$..... each.

The following are the names in full and the address and calling of each of the applicants with the amount of stock taken by each applicant respectively :

| Applicant. | Amount of Stock Subscribed. |
|------------|--------------------------------|
| | |

The said

will be the first or provisional directors of the company.

A stock-book has been opened and a memorandum of agreement by the applicants under seal in accordance with the statute has been executed in duplicate—one of the duplicates being transmitted herewith.

The undersigned therefore request that a charter may be granted constituting them and such other persons as hereafter become shareholders in the company, a body corporate and politic for the purposes above set forth.

| Signatures of Witnesses. | Signatures of Applicants. |
|--------------------------|---------------------------|
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| | |
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| | |

Dated at this day of , 19.....

Note.—If any cash has been paid in on stock or if any property is intended to be accepted on account of stock it should be here stated.

JOINT STOCK COMPANY ACCOUNTS.

Form C.

(Section 10.)

Public notice is hereby given that under The Companies Act, 1902, letters patent have been issued under the seal of the Secretary of State, bearing date the day of, incorporating (here state names, address and calling of each corporator named in the letters patent), for the purpose of (here state the undertaking of the Company, as set forth in the letters patent), by the name of (here state the name of the Company as in the letters patent), with a total capital stock of dollars, divided into shares of dollars.

Dated at the office of the Secretary of State of Canada, this....., day of, 19.....

A. B.,
Secretary.

Form D.

(Section 29.)

Public notice is hereby given, that under The Companies Act, 1902, supplementary letters patent have been issued under the seal of the Secretary of State, bearing date the day of....., whereby the undertaking of the Company has been extended to include (here set out the other purposes or objects mentioned in the supplementary letters patent).

Dated at the office of the Secretary of State of Canada, this day of, 19.....

A. B.,
Secretary.

Form E.

(Section 45.)

Public notice is hereby given, that under The Companies Act, 1902, supplementary letters patent have been issued under the Seal of the Secretary of State, bearing date the.....

day of, whereby the total capital stock of (here state the name of the company) is increased (or reduced, as the case may be) from dollars to dollars.

Dated at the office of the Secretary of State of Canada, this....., day of, 19.....

A. B.,
Secretary.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Except in so far as they apply to Loan Companies incorporated or formed, under the provisions of The Companies Act, before August 11, 1899.

(Section 90.)

| Year and Chapter. | Title. | Extent of Repeal. |
|------------------------------------|---|--|
| Revised Statutes of Canada, c. 119 | An Act respecting the incorporation of Joint Stock Companies by Letter Patent | The whole Act. |
| 1897, c. 27..... | An Act to amend The Companies Act..... | The whole Act. |
| 1898, c. 50 | An Act further to amend The Companies Act..... | The whole Act. |
| 1899, c. 40 | An Act to amend The Companies Clauses Act and the Companies Act | By striking out of s. 1 the words "or The Companies Act, chapter 119." |

CHAPTER XVIII.

CANADIAN DECISIONS IN COMPANY LAW.

RE IMPERIAL STARCH COMPANY CASE.

(Decided by Mr. Justice MacMahon on 11th April, 1905.)

MacMahon, J. :—Motion on behalf of George F. Benson for a mandamus to compel the Trusts and Guarantee Company, Limited, as transfer agent and registrar of the Imperial Starch Company, Limited, to rectify the register of the Starch Company, and to enter and record the transfer of two shares of the preference stock of the Starch Company from William M. Leacy to the applicant.

The Imperial Starch Company on November 1st, 1901, issued to William M. Leacy a certificate for five fully paid-up shares of the preference stock of that company of the par value of \$100 each, which, as appears by the certificate, "are transferable only on the books of the company by the owner thereof in person or by attorney on the surrender of this certificate." On the face of the certificate the Trusts and Guarantee Company is named as the transfer agent and registrar of the company.

Leacy, on January 16th, 1905, assigned by endorsement on the back of the certificate, two of the shares to J. F. Junkin, of Toronto, which were transferred to him by the Trusts and Guarantee Company, the transfer agents of the Starch Company, on the books of that company, on January 28th, 1905. Mr. Junkin then desired to transfer one of the shares to George F. Benson, and the other to Mr. Strachan, of Montreal. Upon the manager of the Trusts Company being informed that Mr. Benson was the managing director of the Edwardsburg Starch Company, Mr. Junkin was told that the Trusts Company as transfer agents could only transfer stock of the Starch Company upon the authority of that company being given. Shortly after this, Mr. Hugh Blain, President of the Imperial Starch Company, telephoned the Trusts Company that the transfers of the shares to Mr. Benson and Mr. Strachan were not to be put through. Mr. Junkin attended again on January 24th, and requested the transfers to be made to Mr. Benson and Mr. Strachan, but the Trusts Company refused this request.

On February 8th or 9th, Mr. Junkin requested the Trusts Company to have the transfer of the shares to himself cancelled, as he wished to return the certificate to Mr. Leacy, and the cancellation was made on the books of the Imperial Starch Company, and the transfer to Mr. Junkin

on the back of the certificate was stamped "cancelled," and the certificate returned by Junkin to Leacy.

Leacy by endorsement on the share certificate dated February 27th, assigned two of the shares to George F. Benson, and Leacy appointed Mr. W. H. Blake, his attorney, to transfer the shares on the books of the Imperial Starch Company to Mr. Benson. Mr. Blake was also appointed attorney by Mr. Benson to accept for him the said two shares of stock. Mr. Blake, on March 2nd, exhibited the share certificate, the transfer and the powers of attorney to the manager of the Trusts and Guarantee Company, and applied to have the stock transferred, but the manager refused to make the transfer.

On January 26th, 1905, at a meeting of the directors of the Imperial Starch Company, the following by-law was passed:—

"Whereas it is desirable and in the best interests of the company that the shares of the company shall be transferable on the books of the company only in such manner and subject to such conditions and restrictions as are hereinafter mentioned. Now, therefore, be it enacted, and it is hereby enacted, that no transfer of any stock or shares of the company shall be valid until approved of by the directors, and registered on the books of the company. All transfers of stock or shares shall be at the discretion of the directors."

Before this by-law could become effective, it required ratification by the stockholders, and at a meeting of the stockholders held on February 7th, representing 1,700 out of a total of 2,000 shares, the by-law was unanimously ratified.

The Imperial Starch Company was incorporated under the Joint Stock Companies Act, R.S.O. ch. 191, and by sec. 27 it is provided: "The shares of stock of the company shall be deemed personal estate, and shall be transferable on the books of the company in such manner only, and subject to all such conditions and restrictions as by this Act, or by the special Act, or by the letters patent or by-laws of the company may be prescribed."

"28. The directors may refuse to allow the entry, in any such book, of any transfer of shares of stock whereof the whole amount has not been paid in."

"30. No share shall be transferable until all previous calls thereon have been fully paid in, or until declared forfeited for non-payment of calls thereon."

And by sec. 47, "The directors may from time to time make by-laws not contrary to law, or to the letters patent of the company, or to this Act, to regulate:—

“(a) The allotment of stock; the issue and registration of certificates of stock; . . . the transfer of stock.”

One need not stop to consider such cases as *Bradford Banking Company v. Briggs, Son & Co., Limited* (1886) 12 App. Cas. 29; *Bank of Africa v. Salisbury Gold Mining Company* (1892), 41 W. R. 47, and in *re McKain and Canadian Birkbeck I. & S. Co.*, 7 O. L. R. 241, where, in the first two cases, the question for decision was: Whether a lien conferred by articles of association on the shares of a member indebted to the company was valid, any transfer by such indebted member being made dependent on the consent of the directors. And in the McKain case a question of a somewhat similar character arose under a by-law passed by the Birkbeck Company. No such question arises here, as the five shares owned by Leacy (two of which he transferred to Benson) are fully paid-up shares.

The point raised here is concluded by the decision in *Re Panton and Cramp Steel Co.*, 9 O. L. R. 3. Osler, J.A., in delivering the judgment, said: “The transfer being in order and the stock paid in in full, the company had no discretion to exercise in the matter, or option, but to comply with the demand of the transferee to record the transfer.”

The Statute gives the company power to pass by-laws “regulating the transfer” of stock; that is: How and in what manner and with what formalities it is to be transferred. But the Imperial Starch Company has passed a by-law virtually empowering the directors to prohibit the transfer of stock; that is, unless the directors approve of the transfer it cannot be made in the books of the company. This, in effect, would prevent a holder of fully paid-up shares in the company from selling and realizing on his stock, because no purchaser could be found, if registration as owner could be prevented at the caprice of the directorate.

Under sec. 28 of the Act the directors may refuse to allow the entry to be made of any transfer of shares of stock in any such book whereof the whole amount has not been paid in. This section was enacted to prevent a solvent shareholder from escaping liability for unpaid calls by transferring his stock to a man of straw; and the power of the directors does not extend beyond refusing to transfer stock which has not been fully paid in.

The order must go for the transfer of the two shares to the applicant Benson on the books of the Imperial Starch Company. That company must pay the costs of the applicant and of the Trusts and Guarantee Company.

HILL'S CASE.

(Decided by Mr. Justice MacMahon on 11th November, 1905.)

A subscriber for a share in a company was debited in the company's stock ledger with one share, was placed on the "shareholders' list" and was drawn upon for the first payment of ten per cent. and paid the draft. There was no formal allotment to him.

Held, that what had been done must be taken to have been done by authority of the directors and to be a mode of allotment "ordained" by them within the meaning of the Companies' Act, R.S.O. 1897, ch. 191, sec. 26.

The Ontario Companies' Act, R.S.O. 1897, ch. 191, sec. 26, provides: "If the letters patent or special Act make no other definite provision, the shares of stock of the company, so far as they are not allotted thereby, shall be allotted when and as the directors by by-law or otherwise ordain."

When an application is made for stock, there must be some act of the directors shewing that the application has been accepted and the stock allotted; and where no by-law has been passed by the directors allotting the stock, then the question as to whether the directors have "otherwise ordained" the allotting to the applicant must be determined by what they have done.

The Act in force when *Denison v. Leslie* (1879), 3 A. R. 536, was decided, was R. S. O. 1877, ch. 150, sec. 34, which is the same as sec. 26 of the present Act, and Moss, C.J.A., in delivering the judgment of the court in that case, said, at page 545: "During the argument I felt some doubt whether anything more was necessary to complete the liability of the defendant than the mere fact of recording him as the holder of, and thus allotting to him, ten shares. Further consideration, however, has satisfied me that the court below was quite right in holding that the additional fact of communication in some manner to the defendant was essential."

Now, in the present case Hill was recorded in the shareholders' list or register of the company as the holder of, and thus there was allotted to him, one share of the stock. There is in addition the communication by the company to him of the fact of his being a shareholder, and there is the further fact that he paid the first call of ten per cent. on the share so allotted to him.

As to what constitutes an allotment, Mr. Justice Chitty, in *Nicol's Case* (1884), 29 Ch. D. 421, at page 426, said: "There is no difference, as has been often pointed out, between a contract to take shares and any

other contract. What is termed 'allotment' is generally neither more nor less than the acceptance by the company of the offer to take shares. To take the common case, the offer is to take a certain number of shares, or such a less number of shares as may be allotted. That offer is accepted by the allotment either of the total number mentioned in the offer or less number, to be taken by the person who made the offer. This constitutes a binding contract to take that number according to the offer and acceptance. To my mind there is no magic whatever in the term 'allotment' as used in these circumstances. It is said that the allotment is an appropriation of a specific number of shares. It is an appropriation, not of specific shares, but of a certain number of shares. It does not, however, make the person who has thus agreed to take the shares a member from that moment; all that it does is simply this—it constitutes a binding contract under which the company is bound to make a complete allotment of the specified number of shares, and under which the person who has made the offer, and is now bound by the acceptance, is bound to take that particular number of shares. In most cases the act of placing the person who has agreed to become a member on the register is a mere matter of form, and may be described as a mere ministerial act; but it appears to me that in point of law all that is done by the process I have just indicated, and all that was done in this case, was to make a complete and binding contract. As Lord Justice Baggallay said in *In re Scottish Petroleum Company* (1883) 23 Ch. D. 413, at page 430, 'to constitute a binding contract to take shares in a company when such contract is based upon application and allotment, it is necessary that there should be an application by the intending shareholder, an allotment by the directors of the company of the shares applied for, and a communication by the directors to the applicant of the fact of such allotment having been made.' There Lord Justice Baggallay used the term 'allotment' in what appears to me to be the proper sense of the term. It is only as constituting one of the steps which go to form a complete contract."

Mr. Justice Chitty's judgment was affirmed by the Court of Appeal, (1885), 29 Ch. D. 439.

RE PUBLISHERS' SYNDICATE CASE.

(Decision of Court of Appeal for Ontario, given on 26th January, 1903.)

Shortly after the incorporation of the company, a meeting of the provisional directors, who were then the only shareholders, was held, when a resolution was passed under which Paton, an original shareholder

and provisional director, was paid \$300 out of capital, for alleged services, it not appearing that any service had then been rendered by him. The minutes of this meeting were confirmed at a subsequent shareholders' meeting. At the time no profit had been made by the company and, so far as the books shewed, nothing had been paid on account of the stock. No by-law was passed authorizing these payments.

Held, that the payment of \$300 could not be supported.

This sum was voted to Paton and a like amount to each of the other provisional directors for alleged services as such directors. It was done at what was called a joint meeting of shareholders and provisional directors held for organization, sixteen days after the date of the letters patent, the provisional directors being the only shareholders at the time.

These directors were not servants of the company, but managers, and, apart from contract or agreement, could not claim remuneration for their services, so that such a payment would be in the nature of a gratuity and should be authorized by by-law.

Section 46 of the Ontario Companies' Act, 1897, under which Act the company was incorporated, provides that no such by-law for payment of money to directors should be valid or be acted upon until it had been confirmed at a general meeting of the shareholders. I am of opinion that the resolution in question was not a sufficient compliance with this section, even although it formed part of the minutes which were read at the annual meeting held the following year, and which were confirmed in the ordinary way.

It is further to be observed that no profits had been made at this time, and according to the books, nothing had been paid in by any person on account of his stock.

There is nothing to take this case out of the general rule laid down by Lord Lindley, that the remuneration of directors for their trouble as such, even when authorized by the shareholders, can only be made out of assets properly divisible among the shareholders themselves, and not out of capital.

THE TRUSTS AND GUARANTEE CO., LIMITED, V. THE
ABBOTT MITCHELL CO., LIMITED, ET AL.

(Decided by Mr. Justice Street on 4th February, 1902.)

Plaintiffs being trustees for the bondholders of the defendant company under a mortgage of all its real estate and assets, containing a trust in the words "upon trust that the trustees shall permit the company to

continue and carry on the undertaking and business of the company . . . as the directors may deem expedient (and the company may pledge or mortgage the stock-in-trade, finished or unfinished, and the raw material therefor, but may not pledge the real property, fixtures, machinery or plant, or any part thereof)," brought action to recover from a bank certain material, manufactured and unmanufactured, pledged, and certain debts due the company, transferred, to the bank for advances made.

At the trial it appeared that the defendants, the Bank of Montreal, had made certain advances to the Abbott Mitchell Company, and had taken as security therefor certain "stock-in-trade, finished and unfinished, and the raw material therefor," and a transfer of debts owing to the company; and the question in the action was, whether the bank could hold these as against the plaintiffs.

Street, J., at the close of the case:—The plaintiffs claim under a mortgage from the company, purporting on its face to cover both the real and personal estate, fixtures and undertaking, tools, and all the credits, assets, and everything belonging to the company; and, no doubt, as between the Abbott Mitchell Company and the plaintiffs, the Trusts and Guarantee Company, the document passes everything that belonged to the company; but the question is, whether it passes it, as against the defendants, the Bank of Montreal, who have some commercial securities against the defendants, the Abbott Mitchell Company.

(The learned judge, after considering the mortgage to the plaintiffs, was of opinion that the "stock-in-trade, finished and unfinished, and the raw material therefor," as between the plaintiffs and the defendant company, passed to the plaintiffs by those words, subject to the authority to pledge these articles, which was contained in the trust, already mentioned, and proceeded as follows:—)

The mortgage does not pass the chattels and after-acquired property which are referred to in it, as against subsequent purchasers or encumbrancers, because these words are too general under the authorities, to cover them; so that, although as between the parties, all the material manufactured and unmanufactured would pass to the plaintiffs, it would not pass to the plaintiffs as against subsequent purchasers or subsequent mortgagees.

Then the question comes, what rights have the defendants to this material, manufactured and unmanufactured. That is the first question to be considered.

That material has been pledged by the defendants, the company, to the bank under certain securities which are authorized by sec. 74 of the Ban^l Act. I think that under the terms of the mortgage, the Abbott

Mitchell Company have a perfect right, a complete right, to pledge that material for the purpose of carrying on their business, and that the subsequent clause in the mortgage, which provides that the advances made by the plaintiffs shall have priority over every other advance made to the company, does not interfere with the power which is given to the company to pledge or mortgage the stock-in-trade finished or unfinished or the raw material. So that, there was power in the Abbott Mitchell Company, notwithstanding this mortgage, to create a first lien upon its finished and unfinished stock-in-trade and raw material in favor of the bank and in favor of any person who would advance money upon it.

Dealing with that portion of the pledge, the question arises, whether the position of the bank is really that of a subsequent purchaser, that is to say, whether their security is a valid one.

A by-law for the purpose of raising the money was passed by the directors, and the by-law was approved at a general meeting of the company, but it does not appear that a special meeting was called for the purpose (R. S. O. 1897, ch. 191, sec. 49), though it appears that a very large majority of the shares were represented at the shareholders' meeting; in fact, taking the signatures to the agreement under which these advances were practically guaranteed in the first place, and adding the persons who signed the agreement, but who were not present at this meeting, it appears that 1,425 shares out of 1,500 shares voted or would have voted in favor of the document and the advances.

I think that I am bound by the authorities which hold that advances of this kind, which are merely for the obtaining of money from a bank upon securities authorized by the Bank Act for the purpose of enabling the company to carry on its current affairs, were not required to be authorized by a by-law passed at a meeting, especially called for the purpose, and by two-thirds of the votes present, but that they fall within another clause of the Companies' Act (sec. 46), which enables the directors to enter into transactions for carrying on the ordinary business of the company; so that my conclusion in regard to that security is, that the directors of the company have a right to enter into these transactions without the two-thirds vote of the company, for they have that right under their general power; and, if they had not that power, that the facts in evidence shew that the shareholders of the company were almost unanimous in support of the validity of the security which has been given, and under the authorities, I think the security in either view should be upheld.

Then, the next question is regarding the advances made by the bank on the transfer of the debts. It appears that from the beginning of the

trading operations of the company, they sold very largely to railways and large proprietors of that kind who refused to accept drafts of the company for the amount of the sales to them, and that they sold on four months' time or a discount for cash. Being uncertain whether their customers would take the four months' credit or would pay the cash, they preferred not to draw upon the customers, because if they elected to pay cash, the drafts were very apt to come back; so, instead of that, upon making a sale, they transferred the account to the bank and cashed it at the bank just as if they were cashing a draft for the amount of the sale. That was the way they carried on their business instead of the more usual way of drawing on the customers for the amount of the goods sold them. That was, therefore, a necessary power in them if they were to carry on business at all.

It is contemplated by this agreement, and it is expressly provided by it, that the trustees were to permit the company to carry on the business of the company as they might consider it expedient.

They considered it expedient in carrying on the business of the company, that they should discount these accounts in the manner I have stated, and although the Trusts and Guarantee Company have, under their mortgage, a transfer of all the securities and assets of the company, it is subject to the power of the company to carry on their business in the way that I have mentioned; and therefore the Trusts and Guarantee Company could not interfere with the right of the directors to obtain these advances in the manner I have indicated. These advances also come within the same principle as those to which I have referred, so that the Abbott Mitchell Company were within their rights, in borrowing these moneys from the bank with the aid of the securities upon which they borrowed them, and the securities are good in the hands of the bank, and although the formalities required by the Act in cases of borrowing were not strictly complied with they were amply within the powers of the company.

THE OTTAWA DAIRY CO. V. SORLEY.

(Decision of the Supreme Court of Canada, given on 27th April, 1904.)

Sorley signed a subscription for shares in a company to be formed and a promissory note for the first payment, both of which documents he delivered to the promoter of the company to which they were transferred after incorporation. In an action for payment of calls, Sorley swore that the stock was to be given to him in part payment for the

goodwill of his business, which the company was to take over. The promoter testified that the shares subscribed for were to be an addition to those to be received for the goodwill.

Held, that, though Sorley could, before incorporation, constitute the promoter his agent to procure the allotment of shares for him and give his note in payment, yet the possession of the documents by the promoter did not relieve the company from the duty of inquiring into the extent of his authority and, whichever of the statements made by Sorley and the promoter at the trial was true, the promoter could not bind Sorley by an unconditional application.

Killam, J. :—This action was brought to compel the defendant, as an alleged holder of shares of the capital stock of the plaintiff company to pay calls on such shares, and to pay a promissory note claimed to have been given by him for the first instalment required to be paid upon such shares.

The claim is that, by a memorandum in writing, dated and given to a promoter of the company before its incorporation and handed over to the company after incorporation, the defendant applied for the shares, and that, after the incorporation, they were allotted to him and calls duly made thereon. Notices of the allotment and of the calls are not disputed.

The promissory note was made in favor of the company. It was dated and delivered to the promoter before the company's incorporation, and was payable at a specified date before which the company became incorporated.

It is clear, upon principle, that, in contemplation of the incorporation of a proposed company, a person may effectively constitute an agent to apply on his behalf for shares of the stock of the company when it becomes incorporated, and to give a promissory note for the amount to be subscribed or any part thereof.

If the authority is, in fact, given and, before its withdrawal, the application is made and accepted and the note given, the effect must be the same as if the principal should make the application and give the note personally. And the authority may be given by the signing of the application and of the note and their delivery to the promoter, to be handed over after the incorporation.

I conceive it also to be clear that, if such an application and promissory note be signed and delivered, the authority to bind the signer need not be expressed but may be inferred from circumstances.

But the mere possession of instruments of this character, signed by another person, should not, of itself, be taken as giving or implying

authority to apply for shares on his behalf and to deliver the note on account thereof. The company should still be required to inquire into the authority.

Upon the defendant's statement of the facts, he signed the writings and gave them to Kelly, the promoter, as a step in a transaction by which the shares were to be acquired in part payment of the purchase money for the goodwill of the defendant's business.

Upon Kelly's statement, the defendant was to take the shares in addition to those to be acquired by him for the goodwill, and to pay up their amount in money.

But in neither view does it appear to me that it should be inferred that Kelly was authorized to bind the defendant by an unconditional application for the shares. In the first case, clearly, he would not be. In the second, the subscription would not be intended to be made independently of the proposed transfer of the business. If the defendant did intend to contribute this amount in cash to the capital of the company, it is not reasonable to suppose that he intended to do this if his own business was not to be taken over and the company was to become his business rival. Of course, if the authority had been expressed these considerations would be without weight; but the onus being upon the company to show implied authority, they are of importance.

Here the defendant made no application personally. An unconditional application by Kelly, on his behalf, is not shown to have been authorized. The defendant's conduct, in attending the meetings and in receiving notices of the allotment and of the calls without objection, does not appear to me sufficient either as an admission of Kelly's authority or as an adoption of his application or as an acceptance of any offer to be inferred from the allotment. Everything is consistent with the view that he was treating all of these matters as a part of the transaction for the acquisition of his business by the company.

HOOD V. EDEN.

(Decision of the Supreme Court of Canada, given on 26th June, 1905.)

Hood and others, interested as creditors and otherwise in a struggling firm, agreed to purchase the latter's assets and form a company to carry on its business, and they severally subscribed for stock in the proposed company to an amount representing the value of the business after receiving financial aid which they undertook to furnish. A power

of attorney was given to one of the parties to purchase said assets, which was done, payment being made by the discount of a note for \$2,000 made by Hood and indorsed by another of the parties. The company having been formed the said assets were transferred and the said note was retired by a note of the company for \$4,000 indorsed by Hood, which he afterwards had to pay. Hood also, or the company in Buffalo of which he was manager, advanced money to a considerable amount for the company which eventually went into liquidation. After the company was formed, in pursuance of the original agreement between the parties, stock was issued to each of them as fully paid up according to the amounts for which they respectively subscribed, and in the winding-up proceedings they were respectively placed on the list of contributories for the total amount of said stock. The ruling of the local master in this respect was affirmed by a judge of the High Court and by the Court of Appeal.

Held, reversing the judgment of the Court of Appeal, Davies and Nesbitt, JJ., dissenting, that as all the proceedings were in good faith and there was no misrepresentation of material facts, and as Hood and the others had paid full value for their shares, the agreement by which they received them as fully paid-up was valid and the order making them contributories should be rescinded.

IN RE PANTON AND THE CRAMP STEEL COMPANY, LIMITED,
ET AL.

(Decided by Mr. Justice Osler on 23rd July, 1904.)

A transferee of fully paid-up shares in a company incorporated under the Ontario Companies' Act, R.S.O. 1897, ch. 191, is entitled, on the presentation to the company of a transfer of shares, to have same recorded in the books of the company, the company having no discretion whatever in the matter.

Where, therefore, under a resolution of the directors, the books were closed for a brief period for the alleged purpose of avoiding confusion or inconvenience in ascertaining the shareholders entitled to vote at the annual meeting, and during such period the company refused to record a transfer of shares, a mandamus was granted compelling such transfer to be recorded.

In delivering judgment the presiding judge said :

"The transfer being in order and the stock paid in full, the company had no discretion to exercise in the matter or option but to comply with the demands of the transferee to record the transfer. It may be convenient that for a brief period before the annual or a special meeting of the shareholders transfers should not be recorded, so as to avoid confusion, or rather perhaps, some inconvenience in ascertaining who are shareholders entitled to be present or represented at the meeting, but the power to impose this restriction on sellers and purchasers of shares has not, that I can see, been conferred upon the company, nor do I find any authority, nor have counsel been able to refer me to any, which might indicate that in the absence of statutory authority, the company have any discretion in this respect."

THE HIGHWAY ADVERTISING COMPANY OF CANADA V.
ELLIS ET AL.

(Decision of the Court of Appeal for Ontario, given on 18th April, 1904.)

The owner of a patent, in April, 1898, induced the defendants to agree to take an interest in it, with a view to introducing the patented article into public use. They subsequently decided to form a company. An actual assignment to the defendants was executed in June, 1898, pending incorporation, the expense of which the defendants undertook to bear, and by agreement of even date they agreed to sell the patent to the company, when incorporated, in consideration, *inter alia*, of \$5,000. In August, 1898, after incorporation of the company, an instrument was accordingly executed by the defendants and the company, adopting and confirming the agreement above mentioned, and the patent was assigned to the company, and the \$5,000 paid.

Held, that the defendants were entitled to retain the \$5,000, as against the company, as they did not become promoters until after they were entitled by agreement to the interests in the patent, which were afterwards and before incorporation actually transferred to them. It was also held that even if the defendants had acquired their interests without consideration, that would have made no difference unless acquired by them for the company.

JUDGMENT.

In a case like the present, the company must make out that at the time the purchase was made the defendants stood in such a position that they could not claim to have bought the property for themselves; in other

words, that they were not in a position to sell it to the company when afterwards formed, because that company came into existence with the right to say that the purchase was made by the defendants for it, and not for themselves. This must generally be a task of some difficulty, at all events where the property has not been expressly purchased for the purpose of being transferred to the intended company, or where it is not made to appear that at or before the time when the purchase was made the purchaser had invited the public to come in and join the prospective company.

The defendant Hotchkiss was the owner of the patent, and in the month of April, 1898, he invited the other defendants to take an interest in it with him with a view to introducing the patented improvements in advertising boards into use throughout Canada. It does not appear that when he first opened the matter to them he had come to any conclusion in his own mind as to the best method of establishing the business. But even if he was then contemplating the formation of a company for the purpose of acquiring and operating the patent there was nothing to prevent him from doing so, or disposing of the patent to the company when so formed. Nor was there anything to prevent him, if he was so minded, from giving or selling an interest or interests in the patent to others. The property being his own, he was at liberty to make any disposition of it that he saw fit and whether for value or otherwise.

The fair result of the evidence is, that while he was in this position he sought the assistance of the other defendants to enable him to operate his patent. After discussion it was understood and arranged that each should have an interest jointly in the patent, and that they should use their joint endeavors to make it a successful undertaking. Then arose the question how they should work it in order to achieve a success. They first thought of working it as a syndicate. Then they concluded that the formation of a company would answer better. With that view they decided to make application for incorporation and in the meantime to go on with the business as a syndicate. And at a meeting held on April 13th, 1898, for the purpose of considering the advisability of uniting for the purpose of organizing a joint stock company, it was resolved to apply to the Dominion Government for a charter of incorporation.

Now, if before this conclusion was arrived at, and action taken upon it, the defendant Hotchkiss had actually assigned to each of the other defendants a share or interest in the patent, there could be no pretence that they held such shares as trustees for the intended company, or that they were promoters when they acquired them, so as to prevent them from holding them for their own benefit. They would have been en-

titled to hold such shares or interests just as Hotchkiss was entitled to hold the whole patent, as property that might be sold to the company when formed.

That being so, the mere fact that Hotchkiss had not then completed his agreement with the other defendants by actual transfers cannot prejudice them.

Steps were taken towards procuring the letters of incorporation, and, pending their issue, Hotchkiss, by a document dated June 15th, 1898, did complete his agreement by transferring to the other defendants and one Dr. Willoughby an undivided one-half interest in the patent for a nominal consideration. By a memorandum of agreement, bearing the same date and made between the same parties, the other defendants and Willoughby undertook the burden of applying for incorporation and bearing the preliminary expenses.

By another memorandum of agreement of the same date and made between the defendants and Willoughby of the first part and one John Maughan of the second part, the parties of the first part agreed to sell to the company when incorporated the patent and all improvements in consideration of the company paying to the parties of the first part \$5,000 in cash, and crediting \$45,000 in payment of their liability upon 500 shares of the capital stock of the company subscribed, or to be subscribed, specifying the amount to be credited to each.

The letters of incorporation issued on August 6th, 1898, and on the 16th of the same month, by an instrument made between the defendants and Willoughby of the first part, John W. Maughan of the second part, and the plaintiffs of the third part, the agreement of June 15th was adopted and confirmed. By a document of the same date the patent was assigned to the plaintiffs.

The defendants are entitled to the sum of \$5,000 under the agreement unless the plaintiffs can make out that the defendants had acquired their interests in the patent while they were in a trust position towards the plaintiffs or the company which was being projected.

But, as has been shown, the defendants did not become promoters until after they had become entitled by agreement to interests in the patent, which were afterwards, and before incorporation, actually transferred to them.

Even if they had acquired these interests without consideration that is a matter of no consequence to the plaintiffs unless they were acquired for them.

That not being the case, the bargain upon which they were transferred to the plaintiffs continuing to stand, the defendants are entitled to retain the cash payment made to them pursuant to its terms.

RE PROVINCIAL GROCERS LIMITED. CALDERWOOD'S CASE.

(Decided by Meredith, C.J., on 16th November, 1905.)

One Calderwood by a writing under seal dated the 29th July, 1903, subscribed for one share in the capital stock of the company, and agreed to pay \$100 for it, 10 per cent. on application, 15 per cent. on allotment, 25 per cent. two months thereafter, and the balance as the directors might deem advisable. It was arranged that the company should draw upon Calderwood for the amount payable on application. On the next day, and before anything had been done by the company, he wrote to the company, cancelling his subscription. The company drew on him for the 10 per cent., but he refused to accept the draft, and being pressed by the company by letter of the 16th September, 1903, to accept the draft, again declined to do so. On the 8th September, 1903, a resolution was passed by the directors "that the stock now subscribed be allotted and notice sent to each subscriber that we are drawing on them for their second payment." The company did not draw on Calderwood for the second payment, and he was not notified of the allotment but his name was recorded in the book required by sec. 71 of the Ontario Companies' Act to be kept by the company, as a shareholder holding one share. He was not afterwards in any way treated or dealt with as a shareholder. In a proceeding for the winding-up of the company, it was sought to make him liable as a contributory.

Held, following *Nelson Coke and Gas Co. v. Pellatt* (1902), that the instrument signed by Calderwood was not a mere offer which he could withdraw before acceptance; but that the company never accepted or intended to accept him as a shareholder unless the down payment of 10 per cent. was made, and, after the refusal to make that payment, they made it evident that they had not accepted him; and even if they had accepted him, it was not shown that the acceptance was communicated to him; and he was not, therefore, liable as a contributory.

BESSEMER GAS ENGINE CO. V. MILLS.

(Decision of Falconbridge, C.J., Mr. Justice Street and Mr. Justice Britton, given on 5th November, 1904.)

The plaintiffs, a foreign corporation not licensed to do business in Ontario, authorized Fogle, a resident of the Province, to sell their en-

gines at certain specified prices, upon commission. Fogle never went out to solicit orders, but took only those which came to him at his place of business. He sold an engine for the plaintiffs to the defendant, and this action was brought to recover the price.

Held, that Fogle was a resident agent or representative of an extra-Provincial corporation, within the meaning of sec. 6 of the Extra-Provincial Corporations Act, and the plaintiffs, being unlicensed, were, by sec. 14 of the same Act, incapable of maintaining the action.

JUDGMENT.

The 14th section of the Extra-Provincial Corporations Act provides that so long as any extra-Provincial corporation remains unlicensed under the Act it shall not be capable of maintaining any action in any court in Ontario in respect of any contract made in whole or in part within Ontario in the course of or in connection with business carried on contrary to the provisions of sec. 6 of the Act.

Section 6 provides that no extra-Provincial corporation . . . shall carry on within Ontario any of its business unless and until a license . . . has been granted to it, and no . . . agent or other person shall, as the representative or agent of . . . any such . . . corporation, carry on any of its business in Ontario unless and until such corporation has received such license . . . ; provided that taking orders for or buying or selling goods . . . by travellers or by correspondence, if the corporation has no resident agent or representative and no office or place of business in Ontario, shall not be deemed a carrying on of business within the meaning of the Act.

I think it is plain from an examination of these sections that the Legislature has forbidden extra-Provincial corporations which have not taken out a license from selling their goods in this Province except under the circumstances mentioned in the proviso to sec. 6. I do not think the facts bring the case within that exception. Fogle, who made the sale, was a resident agent, in my opinion, within the meaning of the proviso; he says in his evidence that he never went out to solicit orders, but took only those which came to him at his place of business. He was clearly authorized in writing by the plaintiffs to sell their goods at fixed prices upon commission. There was, therefore, a contract made verbally in Ontario, and completed there by delivery of the goods and part payment, contrary to the provisions of the 6th section of the Act, and the plaintiffs, having admittedly no license, cannot maintain an action.

BIRNEY V. THE TORONTO MILK CO., LIMITED.

(Decided by Mr. Justice Street and Mr. Justice Britton on 15th November, 1902.)

Plaintiff was appointed by the board of provisional directors of a dairy company incorporated under the Ontario Joint Stock Companies' Act to be a director and was at the same time appointed manager at a salary. In an action for the salary or compensation in which it appeared that the services rendered had not resulted in any benefit to the company which had never gone into operation, it was

Held, that as plaintiff had not been appointed manager or his payment provided for by by-law approved of by the shareholders, and as there was no contract under the corporate seal, he could not recover.

In delivering judgment, Justice Street said: The nominal capital of the defendants' company was fixed by the letters patent at \$125,000, divided into 125,000 shares of \$1 each, of which it is stated by the plaintiff that he subscribed for 12,000 shares, and each of the other six corporators for 200 shares.

No money seems to have been paid in by any one, but the plaintiff says that his \$12,000 has been paid in full by commissions upon his efforts to induce a number of established milkmen to sell out their businesses to the company, and that his salary as manager has been earned by his efforts to induce certain of these milkmen to go upon the board, and to advance the money necessary to enable the company to begin the business for which it was incorporated.

None of these efforts of the plaintiff have been successful, nor has the company reaped any advantage from them, for it has never been able to go into operation.

If the plaintiff's view of his position is correct, however, the result will be that the other corporators will be liable to pay him \$495 for what he has done, because his shares he says are fully paid up by his work and theirs are not paid up.

I am of opinion that the plaintiff is not entitled to recover upon a contract with the company, because no by-law for his appointment as manager of the company was passed, and no contract was made with him under the seal of the company.

The Ontario Companies' Act, ch. 191, R.S.O. 1897, sec. 47, clearly contemplates that such appointments should be made by by-law; and, apart altogether from the statute, it is clear that whatever latitude may be allowed to trading corporations in the manner of appointment of mere

servants, or in the case of casual or temporary hirings, appointments of an important character such as that of the manager of the company, in order to be binding, must be under seal.

I think the plaintiff is further prevented from recovering by the effect of the provisions of sec. 48 of ch. 191, R.S.O., which are as follows: "No by-law for the payment of the president or any director shall be valid or acted upon until the same has been confirmed at a general meeting."

There is in the first place the underlying assumption from the terms of this section that a by-law of the directors in the first place is necessary before payments can be made to them or to the president; and this is coupled with the express provision that such a by-law when passed is of no validity until it has been confirmed at a general meeting of shareholders.

It has been argued before us by the plaintiff that this section is only intended to apply to payments to the president for performing the duties of president, and to directors for performing their duties as directors.

In my opinion we should hold the section as requiring the sanction of the shareholders as a condition precedent to the validity of every payment voted by directors to any one or more of themselves whether under the guise of fees for their attendance at board meetings or for the performance of any other services for the company.

It is not conceivable that the Legislature intended to forbid the directors from voting small sums to themselves for their attendance at board meetings, without obtaining the consent of the shareholders, and at the same time, to allow them to vote large sums to themselves for doing other work, without reference at all to the shareholders. The interpretation contended for the plaintiff would in fact render the section nugatory, for nothing would be easier than to evade it.

I think the section should be given a broad and wholesome interpretation, and that it should be held wide enough to prevent a president and board of directors from voting to themselves or to any one or more of themselves any remuneration whatever for any services rendered to the company without the authority of a general meeting of the shareholders.

ONTARIO LADIES' COLLEGE V. KENDRY.

(Decision of Court of Appeal for Ontario, given on 12th April, 1905.)

In an action by a corporation to recover the amount alleged to have been subscribed by the defendant for shares in the corporation, the de-

fendant testified that he was induced to subscribe by the representations of the plaintiffs' agent that two other named persons had each subscribed \$10,000 of shares upon the condition that subscriptions for \$50,000 were obtained by a certain date; that the defendant's subscription was required to make up the \$50,000; and that his subscription would not be binding unless the \$50,000 was fully subscribed by the date named. It was proved that neither of the named persons had subscribed or promised to subscribe for \$10,000 each, either conditionally or unconditionally, that they did not do so at any time after the defendant's subscription, and that \$50,000 was not subscribed on or before the date named. The defendant's testimony was not contradicted, the plaintiffs' agent having died some years before the commencement of the action; and the trial judge credited the testimony.

Held, that it was sufficient without direct corroboration, and, in the absence of facts or circumstances of countervailing weight, should be accepted.

Held, also, that the plaintiffs were bound by the material representations of the agent, who was duly authorized to solicit subscriptions for shares, whether those representations were made in good faith and with a belief in their fulfilment or not.

It was urged that the plaintiffs were not bound by the representations of their agent. He was undoubtedly their agent to solicit subscriptions for shares, and the plaintiffs are now seeking to take the benefit of what he did in the matter of procuring the defendant's subscription. It is clear law that if an agent at the time a contract is entered into makes any representation or declaration touching the subject matter, it is the representation or declaration of his principal; and it is now settled that a principal cannot enforce a contract induced by the material misrepresentations of the agent who negotiates it, whether such misrepresentations are fraudulent or not. Here the representations were material, and whether made in good faith and with a belief in their certain fulfilment or not, they cannot be ignored or repudiated by the plaintiffs.

RE WIARTON BEET SUGAR MANUFACTURING CO. ALEX-
ANDER McNEILL'S CASE.

(Decided by Mr. Justice Teetzel on 20th April, 1905.)

A certificate of 238 shares of stock was issued to McNeill, described as fully paid up, pursuant to an understanding between him and the directors. He paid for 171 shares, and accepted the certificate knowing

that 67 shares were not paid for, but believing that there was no further liability in respect to them. There was no evidence of any application for them by him or of any allotment to him. He transferred one share, surrendered his certificate, and got a new one for 237 shares, and acted as a director of the company. His name was in the stock ledger and stock register as a holder of 237 shares.

Held, that he was a shareholder with all the rights and liabilities of a shareholder, and that he was properly put upon the list of contributories for the amount actually unpaid in respect of the shares.

McNeill had paid \$1,500 on a guarantee given for the company, and claimed to set-off that amount against his liability on the above shares.

Held, that sec. 37 of R.S.O. 1897, ch. 191, has reference only to an action against a shareholder by a creditor of the company, and that its provisions do not extend the right of set-off to proceedings against shareholders under that Act, and that such right did not exist on the broad ground of absence of mutuality between the claim of the liquidator against McNeill and the latter's claim as a creditor against the company.

Judge Teetzel said: On the 6th August, 1902, a certificate for 238 shares of the par value of \$25 each described therein as fully paid up and non-assessable, was issued to McNeill, but he in fact only paid to the company a sum equal to 171 shares, and the \$1,675 represents the par value of the remaining 67 shares.

The records contained no evidence of an application by McNeill for these 67 shares, nor does there appear to have been any formal resolution allotting them to him; but I think the evidence is conclusive that they were issued in the same certificate with the shares that he had paid for, as bonus stock, in pursuance of an understanding between the directors and McNeill and others. In other words, I think, an effort was made to issue stock at a discount.

There is no doubt, I think, that McNeill had actual knowledge that the 67 shares were not paid for, and he received and accepted the certificate with that knowledge, but I have no doubt with the innocent belief that there would be no further liability cast upon him in respect of the shares.

After receiving the certificate for the 238 shares, he transferred one share and afterwards became and for several months continued to be a director of the company.

When he transferred the one share, he surrendered the certificate for 238 shares and obtained a new certificate for 237 shares.

He appears in the stock ledger and in the stock register as the holder of 237 shares, and in my opinion he is a shareholder in the company with

all the rights and liabilities of such a shareholder, and having chosen to accept the certificate of ownership of these shares and having acted upon the same with full knowledge of all the facts, he cannot now repudiate his status as a shareholder in respect of them.

With reference to the liquidator's appeal, I am of opinion with much respect, that the learned referee was in error in allowing the set-off in question. According to his view, a shareholder in a company incorporated under the Ontario Act can set up against a claim by a liquidator for amount unpaid on his shares any debt due to him by the company, referring to section 37, chapter 191, R.S.O. 1897, sub-section 2 of which reads as follows: "Any shareholder may plead by way of defence, in whole or in part, any set-off which he could set up against the company except a claim for unpaid dividends, or a salary or allowance as a president or director of the company."

This has reference to any action against a shareholder by a creditor of the company.

To allow set-off by a shareholder who is also a creditor would violate the spirit and intention of the Winding-up Act, the ruling object of which is the pro rata distribution of the assets of an insolvent company amongst its creditors, and I cannot construe the provisions of section 37 of the Ontario Companies' Act as extending the right of set-off to proceedings against shareholders under the Winding-up Act.

It is quite clear upon the authorities that unless said section 37 gives the right of set-off as against the liquidator there is no authority for allowing set-off.

As regards the law allowing a set-off of one debt against another, as administered by the courts whether of law or of equity, both in this country and in England, the mutuality between cross debts or demands has always been the underlying essential. I can find no case where it has been allowed in favor of a contributory shareholder as against a liquidator; but the cases are very numerous against such allowance.

The Ontario Companies Act.

An Act respecting Joint Stock and other Companies.

Assented to 20th April, 1907.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Ontario Companies Act*.

2.—(a) the word “corporation” in this Act includes all companies, whether with or without capital, and whether the capital thereof is divided into shares or not.

(b) The word “company” in this Act means only a company having a capital divided into shares.

PART I.

INCORPORATION, RE-INCORPORATION, AMALGAMATION.

Corporations formed for certain purposes may be incorporated by letters patent.

3. The Lieutenant-Governor may, by Letters Patent, grant a charter to any number of persons, not less than five, of the age of twenty-one years, who petition therefor, constituting such persons and any others who have or may thereafter become subscribers to the memorandum of agreement hereinafter referred to, a body corporate and politic with or without capital divided into shares, for any of the purposes to which the authority of the Legislature of Ontario extends, except the construction or working of railways for public use within Ontario, the business of insurance, and of loan corporations within the meaning of *The Loan Corporations Act*.

Petition for incorporation.

4.—(1) The applicants for incorporation of a company with capital divided into shares, may petition the Lieutenant-Governor, through the Provincial Secretary, for the grant of Letters Patent. The petition of the applicants shall show:

- (a) The proposed corporate name of the company; Name.
- (b) The objects for which the company is to be incorporated; Object.
- (c) The place within Ontario where the head office of the company is to be situated; Head office
- (d) The amount of the capital of the company, the number of shares, and the amount of each share; Capital.
- (e) The name in full, the place of residence and the calling of each of the applicants; Names of applicants.
- (f) The names of the applicants, not less than three, who are to be the provisional directors of the company. Directors.
- (2) The petition may be in the form or to the effect set out in Schedule "A" to this Act, and shall be accompanied by a memorandum of agreement, executed in duplicate in the form or to the effect set out in Schedule "B" to this Act. Form of Petition. Memo. of agreement.
- (3) Each petitioner shall be the *bona fide* holder in his own right of the share or shares for which he has subscribed in the memorandum of agreement. Petitioners to be bona fide holders for shares.
- (4) The petition may ask to have embodied in the letters patent any provision which, under this Act might be embodied in any by-law of the company when incorporated. Petition may pray for insertion of special clauses in letters patent.
- 5.—(1) The applicants for the incorporation of a corporation not having share capital may petition the Lieutenant-Governor through the Provincial Secretary for the Grant of Letters Patent. The petition of the applicants shall show: Petition for incorporation without share capital.
- (a) The proposed corporate name of the corporation;
- (b) The objects for which the corporation is to be incorporated;
- (c) The place within Ontario where its objects are to be carried out;
- (d) The name in full, the place of residence and the calling of each of the applicants;
- (2) The petition may be in the form or to the effect set out in Schedule "C" to this Act. Form of petition.
- (3) The petition shall be accompanied by a memorandum of agreement signed by the petitioners setting out such regulations as may be deemed expedient—(1) for the selection of members, trustees, directors and officers; (2) for the holding of meetings of members, trustees and di-
- Memorandum of agreement.

rectors; (3) for the establishment of branches; (4) for the payment of directors, trustees, officers and employees; (5) for the control and management of the affairs of the corporation. The memorandum shall be expressed in separate paragraphs numbered consecutively, and may be in the form or to the effect set out in Schedule "D" to this Act, and the petitioners may adopt all or any of its provisions or substitute others in lieu thereof.

Change of
name or terms
of application.

6. The Lieutenant-Governor on any application for Letters Patent or Supplementary Letters Patent may give a different name to the corporation than that proposed and may vary the objects or other provisions or terms.

Creation of
capital of
corporation
without share
capital.

7. Any corporation without share capital heretofore or hereafter incorporated upon the consent in writing of all the members of such corporation, may by by-law provide for the creation of a capital divided into shares and may provide for the allotment and payment of such shares and fix and prescribe the rights and privileges of the shareholders therein; Provided, however, that no such by-law shall be valid until confirmed by letters patent.

Amalgamation
of corporations

8.—(1) Any two or more corporations incorporated under the laws of this Province, and having the same or similar objects within the scope of this Act, may, in the manner herein provided, amalgamate, and may enter into all contracts and agreements necessary to such amalgamation.

Joint agree-
ment between
directors pro-
posing to
amalgamate,
etc.

(2) The corporations proposing to amalgamate as aforesaid, may enter into a joint agreement for the amalgamation, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the names, callings, and places of residence of the first directors thereof, and how and when the subsequent directors shall be elected, with such other details as may be necessary to perfect the amalgamation and the subsequent management and working thereof, and in cases of companies having capital divided into shares the number of shares of the capital, the amount of par value of each share, and the manner of converting the share capital of each of the said corporations into that of the new corporation.

To be sub-
mitted to
shareholders or
members of
each corpora-
tion.

(3) The agreement shall be submitted to the shareholders or members of each of the said corporations at a general meeting thereof, called for the purpose of taking the same into consideration.

(4) At such meetings of shareholders or members the agreement shall be considered, and if two-thirds of the votes of all the shareholders or members of each of such

corporations are for the adoption of the agreement, then that fact shall be certified upon the agreement by the secretary of each of such corporations under the corporate seal thereof; thereupon the several corporations by their joint petition may, through the Provincial Secretary, apply to the Lieutenant-Governor for Letters Patent confirming the said agreement, and on and from the date of the said Letters Patent the said corporations shall be deemed and taken to be amalgamated and to form one corporation by the name in the Letters Patent provided, and the corporation so incorporated, shall possess all the properties real, personal and mixed, rights, privileges and franchises and be subject to all the liabilities, contracts, disabilities and duties of each of the corporations so amalgamated.

9. Any corporation incorporated for purposes or objects within the scope of this Act, whether under a special or general Act, and being at the time of its application a subsisting and valid corporation, may apply for letters patent under this Act; and the Lieutenant-Governor may grant Letters Patent incorporating the shareholders or members of the said corporation as a corporation under this Act.

Re-incorporation of corporation.

10. Where an existing corporation applies for the issue of Letters Patent under the provisions of the preceding section, the Lieutenant-Governor may, by Letters Patent, extend the powers of the corporation to such other objects as the applicant desires, name the first directors of the new corporation, and give to the new corporation the name of the old corporation or any other name.

Extension of powers on re-incorporation

11. All rights of creditors against the property, rights and assets of a corporation amalgamated or re-incorporated under the provisions of this Act, and all liens upon the property, rights and assets of such corporation, shall be unimpaired by such amalgamation, or re-incorporation, and all debts, contracts, liabilities and duties of such corporations shall thenceforth attach to the amalgamated or re-incorporated corporation and may be enforced against it to the same extent as if the said debts, contracts, liabilities and duties had been incurred or contracted by it.

Rights of creditors preserved.

12. No action or proceeding shall abate or be affected by such amalgamation or re-incorporation, but for all the purposes of such action or proceeding, such corporation may be deemed still to exist, or the new corporation may be substituted in such action or proceeding in the place thereof.

No action to abate.

Supplementary
letters patent
for certain pur-
poses.

13. Any corporation may from time to time pass by-laws by a vote of not less than two-thirds in value of those shareholders or members present in person or by proxy at a general meeting of the corporation duly called for considering the subject of such by-laws authorizing an application by petition to the Lieutenant-Governor, to direct the issue of Supplementary Letters Patent to the corporation, embracing any or all of the following matters :

Varying
capital stock.

(a) Increasing or decreasing the capital; provided, however, that the capital of a company shall not be increased until ninety per centum thereof has been subscribed and ten per centum paid thereon, and further provided, that on a reduction of the capital of a company the liability of shareholders to persons who at the time of such reduction are creditors of the company shall remain as though the reduction had not been made.

Re-dividing
shares.

(b) Redividing the capital of the company into shares of smaller or larger amount;

Extending
powers.

(c) Extending the powers of the corporation to any objects which the corporation may desire;

Limiting bor-
rowing powers

(d) Limiting or increasing the amount which the corporation may borrow upon debentures or otherwise;

Amending
charter.

(e) Varying any provision contained in the special Act or Letters Patent incorporating the corporation;

Making other
provisions.

(f) Making provision for any other matter or thing in respect of which provision might have been made had the corporation been incorporated under this Act.

Preliminary
conditions to
be established.

14. Before Letters Patent or Supplementary Letters Patent are issued the applicants shall establish to the satisfaction of the Provincial Secretary the sufficiency of the petition, memorandum of agreement, by-law, resolution and all documents filed on such application, and shall furnish such evidence of the *bona fides* of any application as he may deem necessary

Proofs of
matters under
this Act.

15.—(1) The Provincial Secretary, or any officer to whom the application may be referred, may for any purpose under this Act, take evidence in writing, under oath or affirmation.

(2) Proof of any matter which may be necessary to be made under this Act, may be made by statutory declaration, affidavit, or deposition before the Provincial Secre-

tary, or officer as aforesaid, or before any other person authorized to take affidavits.

16. Notice of the granting of Letters Patent or Supplementary Letters Patent, shall be given forthwith by the Provincial Secretary in the *Ontario Gazette*, and the corporation shall be deemed to be existing from the date of the Letters Patent incorporating the same.

Notice of
issuing letters
patent.

17. A company having share capital shall possess the following powers as incidental and ancillary to the powers set out in the Letters Patent or Supplementary Letters Patent:—

Powers inci-
dent to:
company.

- (a) To carry on any other business (whether manufacturing or otherwise) which may seem to the company capable of being conveniently carried on in connection with its business or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights;
- (b) To acquire or undertake the whole or any part of the business, property and liabilities of any person or company carrying on any business which the company is authorized to carry on, or possessed of property suitable for the purposes of the company;
- (c) To apply for, purchase or otherwise acquire, any patents, licenses, concessions and the like, conferring any exclusive or non-exclusive, or limited right to use, or any secret or other information as to any invention which may seem capable of being used for any of the purposes of the company, or the acquisition of which may seem calculated directly or indirectly to benefit the company, and to use, exercise, develop or grant licenses in respect of, or otherwise turn to account the property, rights or information so acquired;
- (d) To enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise, with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which the company is authorized to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the company; and to lend money to, guarantee the contracts of, or otherwise assist

any such person or company, and to take or otherwise acquire shares and securities of any such company, and to sell, hold, re-issue, with or without guarantee, or otherwise deal with the same;

- (e) To take, or otherwise acquire and hold, shares in any other company having objects altogether or in part similar to those of the company or carrying on any business capable of being conducted so as directly or indirectly to benefit the company;
- (f) To enter into any arrangements with any authorities, municipal, local or otherwise, that may seem conducive to the company's objects, or any of them, and to obtain from any such authority any rights, privileges and concessions which the company may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- (g) To establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company (or its predecessors in business) or the dependants or connections of such persons, and to grant pensions and allowances, and to make payments towards insurance, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public, general or useful object;
- (h) To promote any company or companies for the purpose of acquiring all or any of the property and liabilities of the company, or for any other purpose which may seem directly or indirectly calculated to benefit the company;
- (i) To purchase, take on lease or in exchange, hire or otherwise acquire, any personal property and any rights or privileges which the company may think necessary or convenient for the purposes of its business and in particular any machinery, plant, stock-in-trade;
- (j) To construct, improve, maintain, work, manage, carry out or control any roads, ways, tramways, branches or sidings, bridges, reservoirs, watercourses, wharves, manufactories, warehouses, electric works, shops, stores and other works and conveniences which may

seem calculated directly or indirectly to advance the company's interests, and to contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;

- (k) To lend money to customers and others having dealings with the company and to guarantee the performance of contracts by any such persons;
- (l) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, and other negotiable or transferable instruments;
- (m) To sell or dispose of the undertaking of the company or any part thereof for such consideration as the company may think fit, and in particular for shares, debentures or securities of any other company having objects altogether or in part similar to those of the company;
- (n) To adopt such means of making known the products of the company as may seem expedient, and in particular by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes, rewards and donations;
- (o) To sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the company;
- (p) To do all or any of the above things as principals, agents, contractors, trustees or otherwise, and either alone or in conjunction with others;
- (q) To do all such other things as are incidental or conducive to the attainment of the above objects;

Provided however, that the powers set out in any or all of the foregoing paragraphs may be withheld by the Letters Patent or Supplementary Letters Patent.

18. Any corporation incorporated under this Act shall have power— Incidental powers.

- (a) To alter or change its common seal at pleasure. Seal.
- (b) To construct, maintain and alter any buildings or works necessary or convenient for the purposes of the corporation. Buildings, etc.

Real estate.

(c) To acquire by purchase, lease or other title and to hold, use, sell, alienate and convey any real estate necessary for the carrying on of its undertaking, and the corporation shall, upon its incorporation, become and be invested with all the property and rights, real and personal theretofore held by or for it under any trust created with a view to its incorporation.

Restrictions as to holding real estate.

19. Unless other special statutory enactments apply, no parcel of land or interest therein at any time acquired by the corporation and not required for its actual use and occupation or not held by way of security, or not situate within the limits or within one mile of the limits of any city or town, shall be held by the corporation or by any trustee on its behalf, for a longer period than seven years after the acquisition thereof, or after it has ceased to be required for the ordinary purposes of the corporation, but shall be absolutely sold and disposed of, so that the corporation shall no longer retain any interest therein unless by way of security; and any such parcel of land or any interest therein not within the exceptions hereinbefore mentioned, held by the corporation for a longer period than seven years, without being disposed of, shall be forfeited to His Majesty for the use of this Province; provided that the Lieutenant-Governor may extend the said period from time to time not exceeding in the whole twelve years; and further provided that no such forfeiture shall take effect or be enforced until the expiration of at least six calendar months after notice in writing to the corporation of the intention of His Majesty to claim such forfeiture, and during such six months the corporation may dispose of the same; and it shall be the duty of the corporation to give the Lieutenant-Governor, when required, a full and correct statement of all lands at the date of such statement held by or in trust for the corporation.

Provided.

Certain informalities not to invalidate letters patent, etc.

20. The provisions of this Act relating to matters preliminary to the issue of the Letters Patent or Supplementary Letters Patent shall be deemed to be directory only; and no Letters Patent or Supplementary Letters Patent, notice, order or other proceeding by or on behalf of the Lieutenant-Governor, Provincial Secretary or other Government or Departmental officer under this Act shall be held to be void or voidable on account of any irregularity, or otherwise in respect of any matter preliminary to the issue of the Letters Patent or Supplementary Letters Patent, notice, order or other proceeding or of any alterations in any petition or documents submitted in order to

make them comply with this Act or with the departmental practice thereunder.

21. If a corporation incorporated by Letters Patent does not go into actual operation within two years after incorporation or for two consecutive years does not use its corporate powers, such powers, except so far as is necessary for the winding up of the corporation, shall be forfeited, and its name in whole or in part may be granted to another corporation, and in any action or proceeding where such non-user is alleged, proof of user shall lie upon the corporation, provided, however, that no such forfeiture shall affect prejudicially the rights of creditors as they exist at the date of such forfeiture.

Forfeiture of
charter for
non-user.

22. The Letters Patent by which a corporation is incorporated and any Supplementary Letters Patent amending or varying the same, may, at any time, be declared to be forfeited and may be revoked and made void by an Order of the Lieutenant-Governor on sufficient cause being shown in that behalf, and such forfeiture, revocation and making void may be upon such conditions and subject to such provisions as to the Lieutenant-Governor may seem proper.

Revocation of
charter.

23. If a corporation exercises its corporate powers when the number of its shareholders or members is less than five, for a period of six months after the number has been so reduced, every person who is a shareholder or member of the corporation during the time that it so exercised its corporate powers after such period of six months and is cognizant of the fact that it is so exercising its corporate powers with less than five shareholders or members, shall be severally liable for the payment of the whole of the debts of the corporation contracted during such time and may be sued for the same without the joinder in the action or suit of the corporation or of any other shareholder or member, but any shareholder or member who has become aware that the corporation is exercising its corporate powers when the number of its shareholders or members is less than five, may serve a protest in writing on the corporation and may by registered letter notify the Provincial Secretary of such protest having been served and of the facts upon which it is based and such shareholder or member may thereby and not otherwise from the date of his said protest and notification exonerate himself from liability, and if after notice from the Provincial Secretary, the corporation refuses or neglects to bring the number of its shareholders or members up to five such refusal or neglect may, upon the report of the

Company with
less than five
members.

Provincial Secretary, be regarded by the Lieutenant-Governor as sufficient cause for the revocation of the charter of the corporation.

Surrender of
charter.

24. The charter of a corporation incorporated by letters patent may be surrendered if the corporation proves to the satisfaction of the Lieutenant-Governor:—

- (a) That it has no debts existing or other rights in question, or,
- (b) That it has parted with its property, divided its assets rateably amongst its shareholders or members and has no debts or liabilities, or,
- (c) That the debts and obligations of the corporation have been duly provided for or protected or that the creditors of the corporation or other persons holding them consent;
- (d) And that the corporation has given notice of the application for leave to surrender by publishing the same once in the *Ontario Gazette* and once in a newspaper published at or as near as may be to the place where the corporation has its head office, or if it be without share capital where its operations are carried on;

And the Lieutenant-Governor upon a due compliance with the provisions of this section, may accept the charter and direct its cancellation, and may, by his Order, fix a date upon and from which the corporation shall be deemed to be dissolved, and the corporation shall thereby and thereupon become dissolved accordingly.

End of
existence of
corporations

25. The corporate existence of a corporation incorporated otherwise than by Letters Patent may be terminated by order of the Lieutenant-Governor upon petition therefor by such corporation under like circumstances, in like manner and with like effect as a corporation incorporated by Letters Patent may surrender its charter.

Regulations by
Lieutenant-
Governor in
Council.

26. The Lieutenant-Governor in Council may, from time to time, make regulations with respect to the following matters, namely:—

- (a) The cases in which notice of application for Letters Patent or Supplementary Letters Patent under this Act must be given;
- (b) The forms of Letters Patent, Supplementary Letters Patent, notices and other instruments and documents relating to applications and other proceedings under this Act;

- (c) The form and manner of the giving of any notice required by this Act;

and such regulations shall be published in the *Ontario Gazette*.

PART II.

NAME OF CORPORATION.

27.—(1) The corporate name of every company with share capital shall have the word "Limited" as the last word thereof. Use of word "Limited."

(2) Wherever the company or any director, manager, officer or employee thereof uses the name of the company, the word "Limited" shall appear as the last word thereof: Provided, that stamping, writing, printing, or otherwise marking on goods, wares and merchandise of the company, or upon packages containing the same shall not be deemed to be within the provisions of this section: Provided also that where the word "company," "club," "association" or other equivalent word forms part of the said name the word "Limited" may be abbreviated to "Ltd." or "Ld."

(3) Every company and every director, manager, officer or other employee making default in complying with the foregoing provisions of this section shall be liable upon summary conviction to a penalty not exceeding ten dollars for each and every offence: Provided, that the offender upon a subsequent conviction for a similar offence committed after such first conviction shall be liable upon summary conviction to a penalty not exceeding one hundred dollars. Penalty. Proviso.

(4) The prosecution or proceeding to recover a penalty for an offence against the foregoing provisions of this section shall be commenced within six months after the offence has been committed and not afterwards. Limitation of prosecutions.

28. The name of every corporation shall not on any public ground be objectionable and shall not be that of any known corporation or association incorporated or unincorporated, or of any partnership or of any individual or any name under which any known business is being carried on, or so nearly resembling the same as to deceive; provided, however, that a subsisting corporation, association, partnership, individual or person may consent that its or his name, in whole or in part, be granted to a new corporation incorporated for the purpose of acquiring its or his business or promoting its objects. Name to be free from objection. Proviso.

Failure to
make annual
returns.

29. The name of a corporation which has not, for three consecutive years, made the annual summary prescribed by this Act, may be given in whole or in part to a new corporation, unless the defaulting corporation, on notice by the Provincial Secretary by registered letter addressed to the corporation or its president as shown by its last return, proves to the satisfaction of the Lieutenant-Governor that it is still a subsisting corporation; provided, that if at the end of one month from the date of such notice, the Provincial Secretary shall not have received from the corporation or its president response to such notice, the corporation may be deemed to be not a subsisting corporation, and no longer entitled to the sole use of its corporate name; and further provided, that when no annual summary has been filed by a corporation for three years immediately following its incorporation its name may be given to another corporation without notice and such corporation shall be deemed not to be subsisting.

Change of
name if
objectionable

30. In case it is made to appear to the satisfaction of the Lieutenant-Governor that any corporation is incorporated under a name the same as, or so similar to that of an existing corporation, company, partnership, association, individual, or business as to deceive, the Lieutenant-Governor may by Order, change the name of the corporation.

Applications to
Lieutenant-
Governor to
change names
of companies.

31.—(1) Where a corporation is desirous of changing its name, the Lieutenant-Governor, upon being satisfied that the corporation is in a solvent condition, and that the change desired is not for any improper purpose, and is not otherwise objectionable, may by Order change the name of the corporation.

In case pro-
posed name is
objectionable.

(2) In case the proposed name is considered objectionable, the Lieutenant-Governor may change the name of the corporation to some unobjectionable name.

Notice of
change.

32. Notice of the change of the name of a corporation shall be given by the Provincial Secretary by publication in the *Ontario Gazette*.

Change not to
affect rights or
obligations.

33. No such alteration of the name of a corporation shall affect the rights or obligations of the corporation; and all proceedings that might have been continued or commenced by or against the corporation by its former name may be continued or commenced by or against the corporation by its new name.

PART III.

MEETINGS OF COMPANY.

34.—(1) The provisional directors of a company not offering shares for public subscription, shall call a general meeting of the company to be held at a convenient place within two months from the date of the Letters Patent for the purpose of electing directors, appointing auditors, sanctioning the by-laws of the company, and transacting such other business as may be necessary to enable the company to carry on its undertaking, and shall, at least ten days before the day on which such meeting is held, give notice of such meeting by registered letter addressed to each shareholder, setting out in detail the business to be transacted and matters to be considered thereat. First meeting.

(2) The provisional directors shall report to such meeting the number of shares subscribed or underwritten; the names of the subscribers or underwriters; the amount paid thereon; all contracts entered into by or on behalf of the company; the amount of the preliminary expenses and a financial statement of the affairs of the company signed by the auditors (if any). Report at first meeting.

(3) If the said meeting is not called by the provisional directors as aforesaid, any three or more shareholders of the company may call the meeting. Shareholders may call.

35. In default of other express provisions in such behalf in the special Act the Letters Patent or by-laws of the company, notice of the time and place for holding general meetings of the company, including the annual and special meetings shall be given at least ten days previously thereto by registered letter to each shareholder at his last known address, and by an advertisement in some newspaper published at or as near as may be to the head office and to the chief place of business of the company, if these differ, or in the *Ontario Gazette*. Notice of meeting.

36.—(1) The annual meeting of the shareholders of the company shall be held at such time and place in each year as the Special Act, Letters Patent, or by-laws of the company may provide, and in default of such provisions in that behalf the annual meeting shall be held at the place named in the Letters Patent as the place of the head office of the company, on the fourth Wednesday in January in every year. Annual meeting.

(2) At such meeting the directors shall lay before the company,

(a) A balance sheet made up to a date not more than three months before such annual meeting;

- (b) A statement of income and expenditure for the financial period ending upon the date of such balance sheet;
- (c) The report of the auditor or auditors;
- (d) Such further information respecting the company's financial position as the Letters Patent or the by-laws of the company may require;

and, on resolution affirmed by shareholders holding at least five per centum of the capital of the company, shall furnish a copy thereof to every shareholder personally present at such meeting and demanding the same.

(3) The balance sheet shall be drawn up so as to distinguish at least the following classes of assets and liabilities, namely:—

- (a) Cash;
- (b) Debts owing to the company from its customers;
- (c) Debts owing to the company from its directors, officers and shareholders;
- (d) Stock in trade;
- (e) Expenditures made on account of future business;
- (f) Land, buildings and plant;
- (g) Goodwill, franchises, patents and copyrights, trademarks, leases, contracts and licenses;
- (h) Debts owing by the company secured by mortgage or other lien upon the property of the company;
- (i) Debts owing by the company but not secured;
- (k) Amount received on common shares;
- (l) Amount received on preferred shares;
- (m) Indirect and contingent liabilities.

Special meetings.

37. The directors may and upon a requisition made in writing by the holders of not less than one-tenth of the subscribed shares of the company shall, convene a special general meeting of the company, to transact the business set out in the notice calling such meeting.

Directors to call meeting.

38. Upon the receipt of such requisition, which shall set out the objects for which such meeting is proposed to be called and shall be left at the head office of the company, the directors shall forthwith proceed to convene a special general meeting. If they do not cause the same to be held

within twenty-one days from the date upon which the requisition was left at the head office of the company, any shareholders, holding not less than one-tenth in value of the subscribed shares of the company whether they signed the requisition or not, may themselves convene such special general meeting.

39. The president of the company shall preside as chairman at every general meeting of the company; if there is no president or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the shareholders present shall choose some one of their number to be chairman. Presiding officer.

40. The chairman may with the consent of the meeting and subject to such conditions as the meeting may decide, adjourn any meeting from time to time and from place to place. Chairman to be elected when necessary.

41. At any general meeting, unless a poll is demanded, a declaration by the chairman that a resolution has been carried and an entry to that effect in the proceedings of the company, shall be *prima facie* evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. Adjournment by consent.

42. If a poll is demanded, it shall be taken in such manner as the by-laws prescribe, and in case the by-laws make no provision therefor, then as the chairman may direct. In the case of an equality of votes, at any general meeting, the chairman shall be entitled to a second or casting vote. Procedure as to resolution.

43. Subject to the Special Act, Letters Patent or by-laws of the company, at all general meetings of the company every shareholder shall be entitled to as many votes as he holds shares in the company, and may vote by proxy, but no shareholder being in arrear in respect of any call shall be entitled to vote at any meeting of the company. Taking vote when poll is demanded.

44. All meetings of the shareholders and directors shall be held at the place of the head office of the company, save and except when the company is authorized by the Special Acts, Letters Patent or Supplementary Letters Patent, to hold meetings of shareholders or directors out of Ontario. Votes.

45. This part of the Act shall apply only to companies having share capital. Shareholders in arrear not to vote.

PART IV.

SHARES, CALLS.

Share
certificate.

46. Every shareholder shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

Lost certificate.

47. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding twenty-five cents, and on such terms, if any, as to evidence and indemnity as the directors think fit.

Shares personal
estate.

48. The shares of the company shall be deemed personal estate and shall be transferable on the books of the company, in such manner and subject to such conditions and restrictions as by this Act, the special Act, the Letters Patent or by-laws of the company may be prescribed.

49. No shareholder of a co-operative cold storage company or association to which aid has been or may hereafter be granted under the provisions of any statute in that behalf, or of a cheese and butter manufacturing company carried on for co-operative purposes, shall hold shares exceeding \$1,000.

Directors may
refuse transfer
of shares in
certain cases.

50. The directors may refuse to allow the entry in any such books, of any transfer of shares whereof the whole amount has not been paid in; and whenever entry is made in such book of any transfer of shares not fully paid in, to a person being of apparently not sufficient means, the directors present when such entry is authorized shall be jointly and severally liable to the creditors of the company in the same manner and to the same extent as the transferring shareholder, but for such entry, would have been; but if any director present, when such entry is allowed, forthwith enters a written protest against the same, and within eight days thereafter causes such protest to be notified, by registered letter, to the Provincial Secretary, such director may thereby, and not otherwise, exonerate himself from such liability.

Their liability
if they allow
transfers to
persons with-
out means.

51. The directors, upon the passing of a by-law authorizing the payment of a dividend upon shares of the company, may direct that no entry of transfers shall be made

in the books of the company for a period of two weeks immediately preceding the payment of such dividend and payment thereof shall be made to the shareholders of record on the date of closing said books.

52. No transfer of shares unless made by sale under execution, or under the order or judgment of some competent court in that behalf, shall, until entry thereof has been duly made, be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto toward each other, and as rendering the transferee liable, *ad interim*, jointly and severally with the transferor, to the company and its creditors, until entry thereof has been duly made in the books of the company.

Transfer valid only after entry.

53.—(1) The directors may, for the purpose of notifying the person or persons registered therein as owners of such shares, refuse to allow the entry in any such books of a transfer of shares.

Transferor may be notified.

(2) Such owner may lodge a caveat against the entry of such transfer, and thereupon such transfer shall not be made for a period of forty-eight hours.

Owner may lodge caveat.

(3) If within one week from the giving of such notice or the expiration of the said period of forty-eight hours, whichever shall last expire, no order shall have been served upon the company enjoining the entry of such transfer, the company may enter the same.

Transfer may be entered if no order served.

(4) When a transfer is entered after the proceedings heretofore set out the company shall be free from liability in respect of shares so transferred to a person whose rights are purported to be transferred but without prejudice to any claim which the transferor may have against the transferee.

Company not to be liable if section complied with.

54. No shares shall be transferable until all previous calls have been fully paid in, or until declared forfeited for non-payment of calls.

Restrictions as to transfers.

55. The directors of the company may call in and demand from the shareholders thereof, the amount unpaid on shares by them subscribed or held, at such times and places and in such payments or instalments as the Letters Patent or this Act, or the by-laws of the company require or allow; and interest shall accrue at the legal rate for the time being upon the amount of any unpaid call, from the day appointed for payment of such call.

Calling in instalments.

56. If, after a demand therefor, any call is not paid within the time and in the manner provided

Forfeiture of shares.

by the Special Act or Letters Patent or by-laws the directors, by resolution to that effect, reciting the facts and duly recorded in their minutes, may summarily forfeit any shares whereon such payment is not made; and the same shall thereupon become the property of the company and may be disposed of, as by by-law or otherwise the company may ordain; provided that such forfeiture shall not relieve any shareholder of any liability to the company or any creditor.

Issue of share warrants.

57. A company if authorized so to do by Letters Patent or Supplementary Letters Patent and subject to the provisions thereof, may, with respect to any share which is fully paid up, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the share or shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the share or shares included in such warrant, hereinafter referred to as a share warrant.

Holders of share warrants.

58. A share warrant shall entitle the bearer of such warrant to the shares specified in it and such shares may be transferred by the delivery of the share warrant.

Surrender of share warrants

59. The bearer of a share warrant shall, subject to the provisions and regulations contained in the Letters Patent or Supplementary Letters Patent respecting share warrants, be entitled on surrendering such warrant for cancellation, to have his name entered as a shareholder in the register of shareholders, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of shareholders the name of any bearer of a share warrant in respect of the shares specified therein without the share warrant being surrendered and cancelled.

Holders of share warrants not to be deemed shareholders for certain purposes.

60. The bearer of a share warrant may, if the regulations respecting share warrants so provide, be deemed to be a shareholder of the company, either to the full extent or for such purposes as may be prescribed by such regulations; provided, that the bearer of a share warrant shall not be qualified in respect of the shares specified in such warrant for being a director of the company in cases where such a qualification is prescribed by the by-laws of the company.

Entries in register where share warrant issued.

61. On the issue of a share warrant in respect of any share, the company shall strike out of its register of shareholders the name of the shareholder then entered therein as holding such share as if he had ceased to be a shareholder, and shall enter in the register the following particulars:—

- (1) The fact of the issue of the warrant;
- (2) The statement of the shares included in the warrant, distinguishing each share by its number;
- (3) The date of issue of the warrant.

62. Until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by section 113 of this Act, to be entered in the register of shareholders of a company; and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a shareholder.

Entries of share warrants.

63. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognized as depositor of the share warrant. The company shall on two days' written notice return the deposited share warrant to the depositor.

Deposit of share warrants.

64. Subject as herein otherwise expressly provided no person shall, as a bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company; or be entitled to receive any notices from the company but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

Holders of share warrants not to sign requisition for meetings.

65. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

Lost share warrant.

66. The company shall not be bound to see to the execution of any trust, whether express, implied or constructive, in respect of any share; and the receipt of the shareholder in whose name the same stands on the books of the company shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share, whether or not notice of the trust has been given to

Trusts.

the company; and the company shall not be bound to see to the application of the money paid upon such receipt.

Trustees, etc.,
may vote.

Mortgagor of
stock may
vote.

67.—(1) Every executor, administrator, guardian or trustee shall represent the shares in his hands, at all meetings of the company and may vote accordingly as a shareholder, and every person who mortgages or hypothecates his shares may nevertheless represent the same at all such meetings, and may vote accordingly as a shareholder, unless in the instrument creating the mortgage or hypothecation he shall have expressly empowered the holder of such mortgage or hypothecation to vote thereon in which case only such holder or his proxy may vote in respect of said shares.

Joint holders
of stock.

(2) If shares be held jointly by two or more persons, any one of them present at a meeting may, in the absence of the other or others, vote thereon, but if more than one joint shareholder be present or be represented by proxy, they shall vote together on the shares jointly held.

Liability of
shareholders.

68. Each shareholder, until the whole amount of his shares has been paid up, shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon, but shall not be liable to an action therefor by any creditor before an execution against the company has been returned unsatisfied in whole or in part; and the amount due on such execution, but not beyond the amount so unpaid on his said shares, shall be the amount recoverable, with costs, against such shareholder.

Set-off.

69. Any shareholder may plead by way of defence in whole or in part, any set-off which he could set up against the company, except a claim for unpaid dividend, or a salary or allowance as a president or a director of the company.

Shareholders
not liable
beyond unpaid
amount.

70. The shareholders shall not, as such, be held responsible for any act, default or liability whatsoever, of the company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing whatsoever, relating to or connected with the company, beyond the unpaid amount on their respective shares.

Trustees not
personally
liable.

71. No person holding shares as executor, administrator, guardian or trustee, shall be personally subject to liability as a shareholder; but the estates and funds in the hands of such person shall be liable in like manner and to the same extent as the testator or intestate or the minor, ward, or person, interested in the trust fund, would be, if living and competent to act and holding such shares.

72. No person holding shares as collateral security shall, prior to foreclosure, be personally subject to liability as a shareholder, but the person transferring such shares as collateral security shall, until foreclosed, be considered as holding the same, and shall be liable as a shareholder in respect thereof. Mortgagees.

PART V.

PREFERENCE AND DEBENTURE STOCK, DEBENTURES AND MORTGAGES.

73. The directors of a corporation may make by-laws:— Borrowing powers.
 (a) For borrowing money; Debentures.
 (b) For issuing bonds, debentures, or other securities.

And the directors of companies with share capital may make by-laws:—

- (1) For creating and issuing any part of the capital as preference shares; Preference shares.
- (2) For creating and issuing debenture stock; Debenture stock.
- (3) For the conversion of preference shares into common shares or debentures or debenture stock, debentures into debenture stock or preference shares, or any class of shares or securities into any other class. Conversion of preference shares.

74. No by-law referred to in the last preceding section shall take effect until it has been confirmed by a vote of not less than two-thirds in value of the shareholders present in person or by proxy at a general meeting of the company, duly called for considering the same, by notice specifying the terms of the by-law to be confirmed or un- Sanction of by-law.
 animously sanctioned in writing by the shareholders of the company.

75. A by-law for the creation and issue of preference shares or for the conversion of debentures or debenture stock into preference shares may provide that the holders of such shares shall have such preference as regards dividends and repayment on dissolution or winding-up as may be therein set out; may have the right to select a certain stated proportion of the board of directors, or such other control over the affairs of the company as may be considered expedient; or may limit the right of the holders thereof to specific dividends or control of the affairs of the company or otherwise, not contrary to law or to this Act, and may provide for the purchase or redemption of such shares by the company as therein set out; provided, however, that any term or provision of such by-law, whereby the rights Terms of issue of preference shares.

of holders of such shares are limited or restricted, shall be fully set out in the certificate of such shares, and in the event of such limitations and restrictions not being so set out they shall not be deemed to qualify the rights of holders thereof.

Consent of holders to redemption.

76. Unless preference shares, debenture stock, debentures or bonds are issued subject to redemption or conversion, the same shall not be subject to redemption or conversion without the consent of the holders thereof.

Supplementary letters patent in certain cases.

77. No such by-law which has the effect of increasing or decreasing the capital of the company or otherwise varying any term or provision of the special Act or Letters Patent of the company shall be valid or acted upon until confirmed by Supplementary Letters Patent.

Mortgages to secure debentures, etc.

78. The directors may charge, hypothecate, mortgage, or pledge any or all of the real or personal property, rights and powers, undertaking, franchises, including book debts and unpaid calls of the corporation to secure any bonds, debentures or other securities or any liability of the corporation and a duplicate original of such charge, mortgage or other instrument of hypothecation or pledge made to secure bonds, debentures or other securities, shall be forthwith filed in the office of the Provincial Secretary as well as registered under the provisions of any other Act in that behalf.

PART VI.

DIRECTORS AND THEIR POWERS, ETC.

Provisional directors.

79. The persons named as provisional directors in the Special Act or in the Letters Patent shall be the directors of the company, until replaced by the same number of others duly elected in their stead, and shall be eligible for election.

Board of directors.

80. The affairs of the company shall be managed by a board of not less than three directors, who shall be elected by the shareholders in general meeting of the company.

Business must be transacted by quorum of board.

81.—(1) Except as in this section provided no business of a company shall be transacted by its directors unless at a meeting of directors at which a quorum of the board shall be present. Such quorum shall consist of three directors or a majority of the directors of the company, if such majority numbers more than three.

When there is no quorum of directors—calling meeting.

(2) Whenever it shall happen that from any cause there is not a quorum of directors in office the requisition mentioned in section 37 of this Act may be served on such direc-

tors of the company as are still in office, and such directors, though less in number than three, or a majority of the board, may nevertheless call a meeting under section 38 for the election of directors to fill vacancies in the board, and in default of their doing so the requisitionists or other shareholders may call such meeting as in section 38 provided.

(3) This section shall not apply to a sole director remaining in office. If there be no directors remaining in office a meeting to elect directors may be called without service of any requisition.

When not more than one director remains in office.

(4) So long as a quorum of directors remains in office casual vacancies in the board may be filled by such directors as remain in office.

Filling vacancies while there is a quorum.

82. The shareholders of a company, having more than six directors, may, at a general meeting called for that purpose, by resolution of two-thirds of the shareholders present in person or by proxy, authorize the directors to delegate any of their powers to an executive committee, consisting of not less than three, to be elected by the directors from their number. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by such by-law or by the directors.

Executive committee.

83. No person shall hold office as a director unless he is a shareholder absolutely in his own right, and not in arrear in respect of any call thereon, and where any person, who is a director, ceases to be a *bona fide* holder of shares, he shall thereupon cease to be a director.

Qualifications of directors.

84.—(1) The election of directors shall take place at the annual meeting, all the members of the board retiring, and (if otherwise qualified) being eligible for re-election.

Yearly elections.

(2) Election of directors shall be by ballot, if demanded.

Ballot.

(3) The directors shall, from time to time, elect from among themselves a president of the company, and shall also appoint, and may remove at pleasure, all other officers thereof.

President and officers.

85. If at any time an election of directors is not made, or does not take effect at the proper time, the company shall not be held to be thereby dissolved; but such election may take place at any general meeting of the company duly called for that purpose; and the directors shall continue in office until their successors are duly elected.

Failure to elect directors how remedied.

Change by by-law of number of directors or of head office in Ontario.

86.—(1) A company may, by by-law, vary the number of its directors, but so that the number shall be not less than three, or may change the company's head office in Ontario.

By-law to be confirmed by shareholders.

(2) No by-law for either of the said purposes shall take effect until confirmed by a vote of not less than two-thirds in value of the shareholders present in person or by proxy at a meeting of the company duly called for considering the same, or until a copy of the by-law, certified under the seal of the company, has been published once in the *Ontario Gazette*, and in case of the removal of the head office, twice in a newspaper published in each of the places where the head office was fixed and to where it is to be removed, or as near thereto as may be.

Notice.

By-laws.

87. The directors may, from time to time, make by-laws not contrary to law, or to the Letters Patent of the company, or to this Act, to regulate:—

Share.

(a) The allotment of shares; the making of calls thereon; the payment thereof; the issue and registration of certificates of shares; the forfeiture of shares for non-payment; the disposal of forfeited stock and of the proceeds thereof; the transfer of shares;

Dividends.

(b) The declaration and payment of dividends;

Directors' services, etc.

(c) The term of service, manner of selection, and the qualification of the directors;

Meetings.

(d) The time at which and place where the meetings of the company shall be held; the calling of meetings of the company; the requirements as to proxies; and the procedure in all things at such meetings;

Fines.

(e) The imposition and recovery of all penalties, and forfeitures admitting of regulation by by-law, and

Conduct of affairs generally.

(f) The conduct in all other particulars of the affairs of the company;

Power to repeal, amend, etc.

And may from time to time repeal, amend or re-enact the same; but every such by-law, and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the company duly called for that purpose, shall only have force until the next annual meeting of the company; and in default of confirmation thereat shall, at and from that time only, cease to have force; and in that case no new by-law to the same or the like effect

Confirmation of by-laws.

or re-enactment thereof, shall have any force until confirmed at a general meeting of the company; provided, however, that the company shall have power either at a general meeting called as aforesaid, or at the annual meeting of the company, to repeal, amend, vary or otherwise deal with any by-laws which have been passed by the directors, but no act done or right acquired under any by-law shall be prejudicially affected by any such repeal, amendment, variation or other dealing.

By-laws may be varied.

88. No by-law for the payment of the president or any director shall be valid or acted upon until the same has been confirmed at a general meeting.

Payments to President or directors.

89. No director of any company shall at any directors' meeting vote in respect of any contract or arrangement made or proposed to be entered into with the company in which he is interested either as vendor, purchaser or otherwise, and any director who may be in any way interested in any contract or arrangement proposed to be made with the company shall disclose the nature of his interest at the meeting of the directors at which such contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest, and in case he discloses the nature of his interest, and refrains from voting, he shall not be accountable to the company by reason of the fiduciary relationship existing for any profit realized by such contract or arrangement; provided, however, that no director shall be deemed to be in any way interested in any contract or arrangement, nor shall he be disqualified from voting or be held liable to account to the company by reason of his holding shares or being a director in any other company with which a contract or arrangement is made or contemplated; provided, also, that this section shall not apply to any contract by or on behalf of a company to give the directors or any of them security by way of indemnity.

Directors not to vote on contracts in which they have a personal interest, etc.

Proviso.

90. The company shall not, unless authorized by the special Act, Letters Patent or Supplementary Letters Patent, use any of its funds in the purchase of shares of any other corporation until the directors have been expressly authorized by a by-law passed by them for the purpose and confirmed by a vote of not less than two-thirds in value of those shareholders present in person or by proxy at a general meeting of the company duly called for considering the same.

Not to purchase shares of any other corporations.

91. The directors of the company shall not declare or pay any dividend when the company is insolvent, or any

Liability of directors declaring a

dividend when
company is
insolvent, etc.

How a director
may void such
liability.

Stock
dividends.

No loan by
company to
Shareholders.

Liability of
directors for
wages.

dividend the payment of which renders the company insolvent, or diminishes the capital thereof; but if any director present when such dividend is declared, forthwith, or if any director then absent, within twenty-four hours after he has become aware thereof, and able so to do, enters his written protest against the same, and within eight days thereafter causes such protest to be notified, by registered letter, to the Provincial Secretary, such director may thereby, and not otherwise, exonerate himself from liability.

92. For the amount of any dividend which the directors may lawfully declare payable in money, they may declare a stock dividend and issue therefor shares of the company as fully paid or partly paid, as the case may be, or may credit the amount of such dividend on the shares of the company already issued but not fully paid and the liability of the holders of all shares mentioned in this section shall be reduced by the amount of such dividend.

93. No loan shall be made by the company to any shareholder, and if such loan is made all directors and other officers of the company making the same and in any wise assenting thereto, shall be jointly and severally liable to the company for the amount thereof, and also to third parties to the extent of such loan with legal interest, for all debts of the company contracted from the time of the making of the loan to that of the repayment thereof.

94. The directors of the company shall be jointly and severally liable to the labourers, servants, and apprentices thereof for all debts not exceeding one year's wages due for services performed by the company while they are such directors respectively; but no director shall be liable to an action therefor, unless the company has been sued therefor within one year after the debt became due, nor unless such director is sued therefor within one year from the time when he ceased to be such director, nor before an execution against the company has been returned unsatisfied in whole or in part; and the amount due on such execution shall be the amount recoverable with costs against the directors.

PART VII.

PROSPECTUS AND DIRECTORS' LIABILITY.

"Prospectus,"
meaning of.

95.—(1) In this Act the word "prospectus" shall mean any prospectus, notice, circular, advertisement or other invitation offering for subscription or purchase any shares,

debentures or other securities of a company, or published or issued for the purpose of being used to promote or aid in the subscription or purchase of such shares, debentures or securities, and the word "company" shall mean any company incorporated or proposed to be incorporated.

(2) This part of this Act shall apply to every company whether formed before or after the commencement of this Act which offers for subscription or sale shares, debentures or other securities and to every company whether incorporated under the laws of the Province of Ontario or otherwise, the shares, debentures or other securities of which are dealt in within the Province of Ontario.

Application of
this part.

96.—(1) Upon any offer of shares to the public for subscription, it shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission and the amount or rate per cent. of the commission paid or agreed to be paid are respectively authorized by the letters patent or supplementary letters patent and disclosed in the prospectus, and the commission paid or agreed to be paid does not exceed the amount or rate so authorized.

Commissions.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company or procuring or agreeing to procure subscriptions whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

Capital not to
be applied in
paying com-
missions except
as authorized.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

Brokerage may
be paid.

97.—(1) Every company heretofore or hereafter incorporated under any general or special Act, the number of shareholders of which is increased to a number greater by ten than the number of applicants for incorporation or which has its debentures or other securities held by more than ten persons, and every company incorporated otherwise than as above set out which has more than ten share-

What com-
panies must
file prospec-
tus.

holders or holders of debentures or other securities within Ontario, shall file a prospectus in the manner hereinafter set out.

(2) All purchases, subscriptions or other acquisitions of shares, debentures or other securities of any company required in the manner above provided to fyle a prospectus, shall be deemed as against the company or the signatories to the prospectus to be induced by such prospectus, and any term, proviso or condition of such prospectus to the contrary shall be void.

(3) No subscription for stock, debentures or other securities, induced or obtained by verbal representations, shall be binding upon the subscriber, unless prior to his so subscribing he shall have received a copy of the prospectus.

Date of prospectus.

98.—(1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

Prospectus to be signed and fyled.

(2) A copy of every such prospectus shall be signed by every person who is named therein as a director or proposed director or provisional director of the company, or by his agent authorized in writing, and shall be fyled with the Provincial Secretary, on or before the date of its publication.

Not to be issued until fyled.

(3) The Provincial Secretary shall not receive or fyle any prospectus unless it is so dated and signed. No prospectus shall be issued until so fyled, and every prospectus shall state on the face of it that it has been so fyled.

What to be disclosed in prospectus.

99.—(1) Every prospectus issued by or on behalf of a company or in relation to any intended company or by or on behalf of any person who is or has been engaged or interested in the formation or promotion of the company, shall state:—

Particulars as to incorporators.

(a) The names, descriptions and addresses of the original incorporators, and the number of shares subscribed for by them respectively;

Qualification and remuneration of directors.

(b) The number of shares, if any, fixed as the qualification of a director, and any provision in the by-laws of the company as to the remuneration of the directors;

Directors.

(c) The names, descriptions and addresses of the directors or proposed directors;

Subscription upon which allotment may proceed.

(d) The minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and, in the case of a second or subsequent offer

of shares, the amount offered for subscription on each previous allotment, and the amount actually allotted;

- (e) The time or times at which under the by-laws of the company a further call or calls may be made upon shares subscribed for; Time of calls.
- (f) The number and amount of shares issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and the number and amount of bonds, debentures or other securities issued or to be issued and allotted to any person; Shares and bonds allotted for other than cash consideration.
- (g) The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of publication of the prospectus and the amount payable in cash, shares, bonds, debentures or other securities to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor; Vendors of property to company.
- (h) The amount (if any) paid or payable as purchase money in cash, shares or debentures of any such property as aforesaid, specifying the amount payable for good-will; Consideration for purchase
- (i) The amount (if any) paid or payable as commission for subscribing, or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in the company, or for underwriting or procuring underwriting of any securities issued or to be issued by the company or the rate of any such commission; Commissions
- (j) The amount or estimated amount of preliminary expenses; Preliminary expenses.
- (k) The amount paid or intended to be paid in cash, shares or debentures to any promoter and the consideration for any such payment; Promoter's remuneration.
- (l) The dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected; provided that this requirement shall not apply to a contract entered into in the ordinary Particulars as to material contracts.

ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than three years before the date of publication of the prospectus;

Names, etc.,
of auditors.

(m) The names and addresses of the auditors (if any) of the company;

Interest of
directors in
property taken
by company.

(n) Full particulars of the nature and extent of the interest (if any) of every director in the promotion of or in the property proposed to be acquired by the company, with a statement of all sums paid or agreed to be paid to him in cash or shares by any person either to qualify him as a director or otherwise for services rendered by him in connection with the formation of the company.

Vendor,"
what to in-
clude.

(2) For the purposes of this section the word "vendor" shall extend to and include a vendor who has entered into any contract, absolute or conditional, for the sale or purchase or for any option of purchase, of any property to be acquired by the company in any case where—

(a) The purchase money is not fully paid at the date of publication of the prospectus; or

(b) The purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(c) The contract depends for its validity or fulfilment on the result of such issue.

When "ven-
dor" includes
"lessor."

(3) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease and the rent, and the expression "sub-purchaser" included a sub-lessee.

Application of
section.

(4) This section shall not apply to a circular or notice inviting existing shareholders or debenture holders of a company to subscribe for further shares or debentures; but subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently; provided that—

(a) The requirements as to the original incorporators and the qualification, remuneration, and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a pro-

spectus published more than one year after the date of the first general meeting, and

- (b) In the case of a prospectus published more than one year after the date of such meeting, the obligation to disclose all material contracts shall be limited to a period of two years immediately preceding the publication of the prospectus.

(5) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus shall be void. Waiver of compliance with section to be void.

(6) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary to specify the names of original incorporators and the number of shares subscribed for by them. When prospectus advertised in newspaper.

100.—(1) Every provisional director, director or other person responsible for the issue and publication of such prospectus shall for every violation of the provisions of the next preceding three sections be liable on summary conviction to a penalty not exceeding \$200 and costs, provided that no provisional director, director or other person shall incur any liability by reason of non-compliance with the said sections,— Penalty.

- (a) As regards any matter not disclosed, if he was not cognizant thereof; or
(b) if the non-compliance arose from an honest mistake of fact on his part,

And provided that in the event of non-compliance with the requirements contained in paragraph (n) of subsection (1) of section 99, no director or other person shall incur any liability in respect of such non-compliance unless it is proved that he had knowledge of the matters not disclosed.

(2) Nothing in this section or the said preceding three sections shall limit or diminish any liability which any person may incur under the general law apart from this Act. Liability under general law not affected.

101.—(1) Where any advertisement, letter head, account or document issued or published by any corporation or any officer, agent or employee, of any such corporation, purports to state the capital of the corporation, then the capital actually and in good faith subscribed and no more shall be so stated. Capital to be correctly stated in advertisements, etc.

(2) Any such corporation, officer, agent or employee who causes to be inserted an advertisement or who publishes, Penalty.

issues or causes to be published or issued any advertisement, letter-head, account or document which states, as the capital of such corporation any larger sum than the amount of such subscribed capital so actually and in good faith subscribed as aforesaid, or which contains any false statement as to the incorporation, control, supervision, management or financial standing of such corporation shall be liable, upon summary conviction, to a penalty not exceeding \$200 and costs and not less than \$50 and costs.

Who may
prosecute,—
application of
penalty.

(3) Any one may be prosecutor or complainant under this Act, and one-half of any fine imposed by virtue of this Act, shall, when received, belong to His Majesty for the use of the Province and the other half shall belong to the prosecutor or complainant.

Liability for
statements in
prospectus.

102.—(1) Where after the passing of this Act a prospectus or notice invites persons to subscribe for shares in, or debentures or debenture stock or other security of, a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorized such naming of him is named in the prospectus or notice as a director of the company or as having agreed to become a director of the company either immediately or after an interval of time, and every promoter of the company and every person who has authorized the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures or debenture stock or other security on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal and of the reason therefor to be given.

Who to be
deemed a
promoter.

(2) A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting solely

in a professional capacity for persons engaged in procuring the formation of the company.

103. Where any company, which has issued shares or debentures or other securities, shall be desirous of obtaining further capital by subscriptions for shares or debentures or other securities, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein, unless he shall have authorized the issue of such prospectus or notice, or have adopted or ratified the same.

Statements in prospectus for raising further capital.

104. Where any such prospectus or notice as aforesaid contains the name of a person as a director of a company, or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorized or consented to the issue thereof, the directors of the company (except any without whose knowledge or consent the prospectus or notice was issued) and any other person who authorized the issue of such prospectus or notice shall be liable to indemnify the person named as director of the company, or as having agreed to become a director thereof as aforesaid, against all damages, costs, charges and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

Indemnity where name of person has been improperly inserted.

105. Every person who by reason of his being a director, or named as a director, or as having agreed to become a director, or of his having authorized the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution, as in cases of contract from any other person who, if sued separately, would have been liable to make the same payment.

Contribution from co-director.

PART VIII.

COMPANIES OFFERING SHARES FOR PUBLIC SUBSCRIPTION.

106.—(1) No allotment shall be made of any share capital by a company offering shares for public subscription, unless the following conditions have been complied with, namely:

Restrictions on allotment. Imp. 1904, s. 4.

(a) The amount (if any) named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or,

(b) If no amount is so fixed and named, then the whole amount of the share capital so offered for subscription

has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription has been paid to and received by the company.

(2) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of ninety days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to the applicants without interest, and if any such money is not so repaid within one hundred days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the ninety days; provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part; Provided, however, that the Provincial Secretary may from time to time extend the times herein limited.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Effect of irregular allotment.
Imp. 1904, s. 5.

107.—(1) An allotment made by a company to an applicant in contravention of the foregoing provisions of this part of this Act shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorizes the contravention of any of the foregoing provisions of this part of this Act with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby; provided that proceedings to recover such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

108.—(1) A company shall not commence any business or exercise any borrowing powers unless:

Restrictions on commencement of business. Imp. 1900, s. 6.

- (a) Shares held, subject to the payment of the whole amount thereof in cash, have been allotted to an amount not less in the whole than the minimum subscription; and
- (b) Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and
- (c) There has been filed with the Provincial Secretary a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

(2) The Provincial Secretary may, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled; Provided, however, that upon it being shewn that such certificate was made upon any false statement or upon the withholding of any material statement, the Provincial Secretary may cancel and annul such certificate.

Certificate that company may commence business.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

Contracts made before company entitled to commence business.

(4) Nothing in this section shall prevent the simultaneous offer for subscription of any shares and debentures or the receipt of any application.

Simultaneous offer of shares and debentures for subscription

(5) If any company commences business or exercises borrowing powers in contravention of this section every person who is responsible for the contravention shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding fifty dollars for every day during which the contravention continues.

Penalty for commencing business before proper time.

Monies to be held in trust.

109. All sums received by the company or by any promoter, director, officer or agent thereof shall be held in trust by the company or such promoter, director, officer or agent until the same may be deposited in a chartered bank to the credit of the company and shall there remain in trust until the issue of the aforesaid certificate by the Provincial Secretary.

Return of allotments.

110.—(1) Whenever a company makes any allotment of its shares the company shall, within one month thereafter, file with the Provincial Secretary:

(a) A return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and

(b) In the case of shares allotted in whole or in part for a consideration other than cash, a contract in writing constituting the title of the allottee to such allotment, together with any contract of sale, or for services or other consideration in respect of which such allotment was made and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

Penalty for default.

(2) If default is made in complying with the requirements of this section every director, manager, secretary or other officer of the company who is, knowingly, a party to the default, shall be liable upon summary conviction to a fine not exceeding fifty dollars for every day during which the default continues.

Statutory meetings.

111.—(1) Every company shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the shareholders of the company, which shall be called the statutory meeting.

Report to be sent to shareholders.

(2) The directors shall, at least ten days before the day on which the meeting is held, forward to every shareholder of the company a report certified by not less than two directors of the company, stating:

(a) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

- (b) The total amount of cash received by the company in respect of such shares, distinguished as aforesaid;
- (c) An abstract of the receipts and payments of the company on capital account to the date of the report, and an account or estimate of the preliminary expenses of the company;
- (d) The names, addresses and descriptions of the directors, auditors (if any), manager (if any), and secretary of the company; and
- (e) The particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(3) The report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

Report to be certified by auditors.

(4) The directors shall cause a copy of the report, certified as by this section required, to be filed with the Provincial Secretary forthwith after the sending thereof to the members of the company.

Report to be filed with Provincial Secretary.

(5) The directors shall cause a list showing the names, descriptions and addresses of the shareholders of the company, and the number of shares held by them, respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any shareholder of the company during the continuance of the meeting.

List of shareholders to be produced at meeting.

(6) The shareholders of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the report, whether previous notice has been given or not, but no resolution of which notice has not been duly given may be passed.

Shareholders may discuss business of company at meeting.

(7) The meeting may adjourn from time to time, and at any such adjourned meeting any resolution of which notice has been duly given, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

Adjournments.

(8) If default is made in filing such report as aforesaid or in holding the statutory meeting, then at the expiration of fourteen days after the last day on which the meeting ought to have been held any shareholder may petition the Court for the winding up of the company in the manner hereinafter provided in that behalf, and, upon the hearing of the petition, the Court may either direct that the

Application to Court if default made in holding meeting.

company be wound up or give directions for the report being filed or a meeting being held, or make such other order as may be just, and may order that the costs of the petition be paid by any persons who, in the opinion of the Court, are responsible for the default.

Application of
this part.

112. This part of this Act shall apply to all companies offering shares for public subscription and shall not apply to a company incorporated before the commencement of this Act.

PART IX.

Record Books.

Record book
to be kept and
what to con-
tain.

113. The corporation shall cause the secretary, or some other officer especially charged with that duty, to keep a book or books wherein shall be kept recorded:—

- (a) A copy of the Letters Patent incorporating the corporation and of any Supplementary Letters Patent issued to the corporation and if incorporated by Special Act, a copy of such Act;
- (b) The names, alphabetically arranged, of all persons who are or have been shareholders or members of the corporations;
- (c) The post office address and calling of every such person while such shareholder or member;
- (d) The names, post office addresses and callings of all persons who are or have been directors of the corporation, with the several dates at which each person became or ceased to be such director.

And in cases of companies having share capital—

- (e) The number of shares held by each shareholder;
- (f) The amounts paid in, and remaining unpaid, respectively, on the shares of each shareholder;
- (g) The date and other particulars of all transfers of shares in their order.

Books to be
kept at head
office.

114. The books referred to in the preceding section as well as those referred to in section 120 shall be kept at the head office of the company within the Province, whether the company is permitted to hold its meetings out of Ontario or not. Any director, officer or employee of a company who shall remove or assist in removing such books from Ontario or who shall act contrary to the provisions

of this section shall be liable on summary conviction to a penalty of \$200; Provided, however, that upon necessity therefor being shewn and adequate assurance being given that such books may be inspected within Ontario by any person entitled thereto after application for such inspection to the Provincial Secretary, the Lieutenant-Governor in Council may relieve any company permitted to hold its meetings out of Ontario from the provisions of this section upon such terms as may be fit.

115. No director, officer or servant of the corporation shall knowingly make or assist to make any untrue entry in any book or books of the company, or shall refuse or neglect to make any proper entry therein; and any person violating wilfully the provisions of this section shall, besides any criminal liability which he may thereby incur, be liable in damages for all loss or injury which any person interested may have sustained thereby.

116.—(1) If the name of any person is without sufficient cause, entered in or omitted from such book or books of the corporation, or if default is made or unnecessary delay takes place in entering in said books the fact of any person having ceased to be a shareholder or member of the corporation, the person or shareholder or member aggrieved, or any shareholder or member of the corporation, or the corporation itself may apply to a Judge of the High Court of Justice for an order that the book or books be rectified, and the Judge may either refuse such application or he may make an order for the rectification of the said book or books, and may direct the corporation to pay the costs of such motion or application and any damages the party aggrieved may have sustained. The Judge may in any proceeding under this section, decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the said books of the corporation whether such question arises between two or more shareholders, or alleged shareholders or members, or between any shareholders or alleged shareholders or members and the corporation, and the Judge may in any such proceeding decide any question which it may be necessary or expedient to decide for the rectification of the said books.

(2) The Judge may direct an issue to be tried in which any question of law may be raised.

(3) An appeal shall lie from the decision of such Judge as if the same had been given in an action.

(4) This section shall not deprive any Court of any jurisdiction it may have.

(5) The costs of any proceeding under this section shall be in the discretion of the Judge.

Record books to be open for inspection.

117. The books referred to in section 113 shall during reasonable business hours of every day, except Sundays and holidays, be kept open for the inspection of shareholders, members and creditors of the corporation and their personal representatives or agents, at the head office or chief place of carrying on its undertaking, and every such shareholder, member, creditor, agent or representative, may make extracts therefrom.

Liability for refusal to allow inspection of books.

118. Any director or officer who refuses to permit any person entitled thereto to inspect such book or books, or make extracts therefrom, shall be liable upon summary conviction to a penalty of \$100.

Books to be *prima facie* evidence.

119. Such books shall be *prima facie* evidence of all facts purporting to be thereby stated, in any action or proceeding against the corporation or against any shareholder or member.

Books of account to be kept.

120. The directors shall cause proper books of account to be kept containing full and true statements:—

- (a) Of the financial transactions of the corporation;
- (b) Of the assets of the corporation;
- (c) Of the sums of money received and expended by the corporation, and the matters in respect of which such receipt or expenditure takes place, and

(d) Of the credits and liabilities of the corporation; and also a book or books containing minutes of all the proceedings and votes of the corporation, or of the board of directors, respectively, and the by-laws of the corporation, duly authenticated, and such minutes shall be verified by the signature of the president, or other presiding officer of the corporation.

False returns, etc.

121. If any person in any return, report, certificate, balance-sheet or other document required by or for the purposes of this Act, wilfully makes a statement false in any material particular he shall be liable on summary conviction to imprisonment not exceeding three months, with or without hard labour, and to a fine of \$100 in lieu of or in addition to such imprisonment as aforesaid.

The Court may appoint an inspector.

122.—(1) Upon an application by not less than one-fifth in value of the shareholders of a company, or one-

fifth in number of the members of a corporation without share capital, a Judge of the High Court of Justice may appoint an inspector to investigate the affairs and management of the corporation. Such inspector shall report thereon to the Judge, and the expense of such investigation shall, in the discretion of the Judge, be defrayed by the corporation or by the applicants, or partly by the corporation and partly by the applicants, as he may order, and he may require the applicants to give security to cover the probable cost of the investigation, and he may make rules and prescribe the manner in which and the extent to which the investigation shall be conducted; or the Judge may examine the officers or directors of the company under oath as to matters that shall come in question.

(2) A corporation may by resolution passed at the annual meeting, or at a special general meeting called for the purpose, appoint an inspector to examine into the affairs of the corporation. The inspector so appointed shall have the same powers and perform the same duties as an inspector appointed by a Judge of the High Court of Justice, and he shall make his report in such manner and to such persons as the corporation by said resolution directs.

Inspection
by company.

Powers and
duties of
inspector.

(3) It shall be the duty of all officers and agents of the corporation to produce for the examination of any such inspector all books and documents in their custody or power. Any such inspector may examine upon oath the officers and agents of the corporation in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the corporation, he shall upon summary conviction be liable to a fine not exceeding \$20, in respect of each offence.

Production of
books and
documents.

Examination
on oath.

Penalty for
non-production.

123. The accounts of the corporation shall be examined once at least in every year, and the correctness of the balance-sheet shall be ascertained by an auditor or auditors.

Accounts shall
be audited

124. The first auditors of the corporation may be appointed by the directors before the first meeting of the shareholders or members, and the auditors so appointed shall hold office until the first general meeting.

First auditors.

125. Thereafter the auditors shall be appointed by resolution at a general meeting of the corporation; they shall hold office until the next annual meeting unless previously removed by a resolution of the shareholders or members in general meeting.

Auditors.

Auditors
may be
shareholders.

126. The said auditors may be shareholders or members of the corporation, but no person shall be eligible as an auditor who is interested, otherwise than as a shareholder or member, in any transaction of the corporation, and no director or other officer of the corporation shall be eligible during his continuance in office.

Provincial
Secretary may
appoint.

127. If an appointment of auditors is not made at an annual meeting, the Provincial Secretary may, on the application of any member or shareholder of the corporation, appoint an auditor of the corporation for the current year, and fix the remuneration (if any) to be paid to him by the corporation for his services.

Directors may
fill vacancies.

128. The directors of a corporation may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors (if any) may act, and any auditor shall be eligible for re-appointment.

Remuneration
of auditors.

129. The remuneration of the auditors of a corporation shall be fixed by the corporation in general meeting, except that the remuneration of any auditors appointed before the first general meeting or to fill any casual vacancy may be fixed by the directors.

Rights and
duties of
auditors.

130. Every auditor of a corporation shall have the right of access at all times to the books, accounts and vouchers of the corporation, and shall be entitled to require from the directors and officers of the corporation such information and explanation as may be necessary for the performance of his duties, and the auditors shall sign a certificate at the foot of the balance sheet stating whether or not their requirements as auditors have been complied with and shall make a report to the shareholders or members on the accounts examined by them, and on every balance sheet laid before the corporation in general meeting during their tenure of office; and in every such report shall state whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the corporation's affairs as shown by the books of the corporation; and such report shall be read before the corporation in general meeting.

PART IX.

RETURNS AND FEES.

Annual sum-
mary of the
affairs of the
company.

131.—(1) The corporation shall, on or before the first day of February in every year, make out a summary, verified as hereinafter required, containing as of the thirty-

first day of December preceding, correctly stated, the following particulars:—

- (a) The corporate name of the corporation;
- (b) The manner in which the corporation is incorporated, whether by special Act, or by Letters Patent, and the date thereof;
- (c) The name, residence and post office address of the president, secretary, and treasurer of the corporation;
- (d) The name, residence and post office address of each of the directors of the corporation;
- (e) The date upon which the last annual meeting of the corporation was held;

Contents of
summary.

In case of companies having share capital in addition—

- (f) The place of the head office, giving street and number when possible;
- (g) The amount of the capital of the company and the number of shares into which it is divided;
- (h) The number of shares subscribed for and allotted;
- (i) The number of shares (if any) issued fully paid as consideration for any transfer of assets, good will or otherwise; if none is so issued, this fact to be stated;
- (j) The amount of calls made on each share;
- (k) The total amount of calls received;
- (l) The total amount of shares forfeited;
- (m) The total amount of shares issued as preference shares and the rate of dividend thereon;
- (n) The total amount paid on such shares;
- (o) The total amount of debentures, debenture stock or bonds authorized, and the rate of interest thereon;
- (p) The total amount of debenture stock, bonds or debentures issued;
- (q) The total amount realized from debentures, debenture stock, and bonds;
- (r) The total number of share warrants issued and the names and addresses of the persons to whom same were issued.

If the company be a mining company

- (s) The number of shares sold or otherwise disposed of at a discount or premium;
- (t) The rate at which such shares were sold or disposed of;
- (u) Whether a sworn copy of the by-laws, if any, providing for the sale of stock at a discount or otherwise, was sent to the Provincial Secretary;
- (x) The date, or dates, upon which such by-laws, if any, were passed and sanctioned.

List of
shareholders.

(2) In cases of companies having share capital the summary shall also contain a list of persons who, on the 31st day of December previously, were shareholders of the company; and such list shall state the names alphabetically arranged, and the address and occupation of each such person; the amount of stock held by each; and the amount, if any, unpaid and still due by each such person.

Posting there-
of.

(3) A duplicate of such summary with the affidavit of verification, shall be posted up in a conspicuous position in the head office of the company on or before the 2nd day of February in each year, and shall be available for inspection by any shareholder or creditor of the company; and the company shall keep the same so posted until another summary is posted under the provisions of this Act.

Verification
thereof.

(4) The summary of every corporation shall be verified by the affidavit of the president and secretary, and if there are no such officers, or they, or either of them, are, or is, at the proper time out of this Province or otherwise unable to make the same, by the affidavit of the president or secretary and one of the directors, or two of the directors, as the case may require; and if the president or secretary does not make or join in the affidavit the reason thereof shall be stated in the substituted affidavit.

Deposit with
Provincial
Secretary.

(5) The summary, verified as aforesaid, shall, on or before the 8th day of February next after the time hereinbefore fixed for making the summary, be transmitted to the Provincial Secretary.

Penalty for
default.

(6) If a corporation makes default in complying with the provisions of this section, the corporation shall incur a penalty of \$20 for every day during which the default continues, and every director, manager or secretary of the corporation, who knowingly and wilfully authorizes or permits such default, shall incur the like penalty, but such penalties shall be recoverable only by action at the suit of or brought by a private person suing on his own behalf with the written consent of the Attorney-General of the Province of Ontario.

(7) This section shall not apply to any corporation until the 1st day of February next after the 31st day of December of the year in which the corporation was organized, or has gone into actual operation, whichever shall first happen.

When section not to apply.

132.—(1) The Lieutenant-Governor in Council may from time to time, establish, alter and regulate the tariff of fees to be paid to the Provincial Secretary on applications, returns, filings, and all transactions under this Act; and may prescribe the form of proceedings and record in respect thereof, and all other matters requisite for carrying out the objects of this Act.

Fees on letters patent, etc., to be fixed by Order-in-Council.

(2) Such fees may be made to vary in amount, under any rule or rules—as to nature of the corporation, amount of capital and otherwise—that may be deemed expedient.

Fees may vary in amount.

(3) No step shall be taken in the Department towards the issue of any letters patent or supplementary letters patent, or the filing of any document under this Act, until all fees therefor and all fees due the Department for any other service have been duly paid.

Restriction.

133. No tender or transmission of any return, by-law or other document shall be deemed to be a due compliance with the provisions of this Act unless and until the prescribed fee for receiving and filing the same has been paid to and has been accepted by the Provincial Secretary.

No compliance with Act to file returns, etc., without payment of fees.

134. A copy of any by-law of the corporation under its seal and purporting to be signed by any officer of the corporation or a certificate, similarly authenticated, to the effect that a person is a shareholder or member of the corporation that a call or calls or dues, assessments or other payments has or have been made are due and have not been paid shall be received as *prima facie* evidence of the by-law or of the statements contained in such certificate in all Courts in Ontario.

Evidence of by-laws.

135. Any writ, notice, order or proceeding requiring authentication by the corporation may be signed by any director, manager or other authorized officer of the corporation, and need not be under the seal of the corporation.

Authentication of summons and notices.

136. A notice or demand to be served or made by the corporation upon a shareholder or member may be served or made either personally or by post, registered, and addressed to the shareholder or member at his place of abode as it last appeared on the books of the corporation.

Service of notices.

Time of
service.

137. A notice or other document served by post by the corporation on a shareholder or member shall be held to be served at the time when the registered letter containing it would be delivered in the ordinary course of post; and to prove the fact and time of service it shall be sufficient to prove that such letter was properly addressed and registered, and was put into the post office, and the time when it was put in, and the time requisite for its delivery in the ordinary course of post.

Proof of
service.

By-laws may be
sanctioned by
written con-
sent of share-
holders.

138. Any by-law by this Act required to be sanctioned by a two-thirds vote of the shareholders at a general meeting specially called for considering the same may in lieu thereof be validly sanctioned by the consent in writing of all the shareholders.

PART X.

MINING COMPANIES.

Issuing shares
at a discount.

139. A mining company heretofore incorporated or hereafter incorporated under this Act and made by the Letters Patent subject to the provisions of this part of the Act, may issue its shares at a discount or at any other rate in the manner hereinafter provided.

Shareholders
not personally
liable for calls

140. No shareholder of such company holding shares issued as herein provided, shall be personally liable for non-payment of any calls made upon his shares beyond the amount agreed to be paid therefor.

By-law author-
izing issue of
shares at a dis-
count.

141. No shares shall be issued at a discount unless authorized by a by-law of the company confirmed by a majority of the shareholders thereof, at a meeting duly called for considering the same, fixing and declaring the rate and any other term and conditions of issue.

By-law must be
verified.

142. A copy of such by-law shall, within twenty-four hours after the same was confirmed, be transmitted by post, registered and prepaid, to the Provincial Secretary, or be filed in the office of the Provincial Secretary within five days, and such copy shall be verified as a true copy by the joint affidavit of the president and secretary, and if there are no such officers, or they, or either of them, are, or is, at the proper time unable to make the same, by the affidavit of the president or secretary and one of the directors, or two of the directors, as the case may require; and if the president or secretary does not make or join in the affidavit the reason therefor shall be stated in the substituted affidavit.

143. Every such mining company shall have written or printed, immediately after or under the name of such company, wherever such name may be used by the company or any director, officer, servant or employee thereof, and shall have engraved upon its seal the words "No PERSONAL LIABILITY"; and upon every share certificate issued by the company, distinctly written or printed in red ink, where such share certificates are issued in respect of shares subject to call, the words "SUBJECT TO CALL"; or if in respect to shares not subject to call, the words "NOT SUBJECT TO CALL," according to the fact.

"No personal liability" to appear on documents issued by company.

Certificates of shares, what to contain.

144. In the event of any call or calls on shares in a company subject to the provisions of this part of this Act remaining unpaid by the holder thereof for a period of sixty days after notice and demand of payment, such shares may be declared to be in default, and the secretary of the company may advertise such shares for sale at public auction to the highest bidder for cash by giving notice of such sale in a newspaper published at the place where the principal office of the company is situated, or in case no newspaper is published thereat, then in a newspaper published at the nearest place to said office once a week for four successive weeks; and said notice shall contain the numbers of the share certificates in respect of such shares and the number of shares, the amount of the call or calls due and unpaid and the time and place of sale; and in addition to the publication of the notice aforesaid, notice shall be personally served upon such shareholder by registered letter mailed to his last known address; and if the holder of such shares fails to pay the amount due upon such shares with interest upon the same and cost of advertising before the time fixed for such sale, the secretary shall proceed to sell the same, or such portion thereof as shall suffice to pay such calls together with interest and cost of advertising; provided that if the price of the shares so sold exceeds the amount due with interest and costs thereon, the excess thereof shall be paid to the defaulting shareholder.

Sale of shares on non-payment of calls.

145. A company which acts in contravention of any provision of this part of the Act, and every director, manager, officer or agent thereof, shall be liable on summary conviction to a fine of \$200 and costs.

Penalty.

146. Notwithstanding anything contained in this part of this Act, the directors of the company shall be liable as provided by section 94 of this Act.

Liability of Directors for wages.

PART XI.

TRUST COMPANIES.

Companies to
which Act
applies.

147.—(1) No company shall be incorporated, or otherwise authorized, by Letters Patent to execute the office of executor, administrator, trustee, receiver, assignee, guardian of a minor's estate or committee of a lunatic's estate, and no Letters Patent shall be granted to any company heretofore incorporated conferring any such powers upon such company unless such company complies with the provisions of this part of this Act.

148. At all times at least three-fourths of the shares of a company incorporated under the provisions of this part of this Act, shall be held by persons who are residents of this Province, or by companies incorporated under the laws of this Province. If at any time it is shewn to the satisfaction of the Lieutenant-Governor in Council that less than three-fourths of the shares of the company are held otherwise than as aforesaid, the Letters Patent incorporating the company may be forfeited under the provisions of section 22 of this Act.

Companies
not to act as
guardians or
committees.

149. No company shall receive authority by letters patent to become or be appointed guardian of the persons of infants or committee of the persons of lunatics.

Regulation re-
garding appli-
cations.

150. The Lieutenant-Governor in Council may from time to time make regulations regarding notice of application for incorporation of trust companies, the objects of incorporation and evidence that the general fitness of the applicants for the discharge of the duties appertaining to such trusts as aforesaid is such as to command the confidence of the public, and that the public convenience and advantage will be promoted by granting to the company the powers applied for.

Liability of
trust
companies.

151. The liability of a trust company to persons interested in an estate held by the company as executor, administrator, trustee, receiver, assignee, guardian or committee as aforesaid, shall be the same as if the estate had been held by any private person in the like capacity, and its powers shall be the same.

Provincial
Secretary may
investigate.

152. The Provincial Secretary may, from time to time, appoint a person to investigate the affairs and management of any trust company; and such person shall report thereon and upon the security afforded to those by or for whom the engagements of the company are held; and the expense of such investigations shall be defrayed by the company; and such person may examine the officers or direc-

tors of the company under oath for the purposes of such investigation.

153. No company incorporated under this Act, or chapter 157 of the Revised Statutes of Ontario, 1887, or chapter 206 of the Revised Statutes of Ontario, 1897, or any other general Act with power to execute the office of executor, administrator, trustee, receiver, assignee, guardian of the estate of a minor, or committee of the estate of a lunatic, shall issue debentures.

Trust companies not to issue debentures.

Rev. Stat. c. 191.

PART XII.

COMPANIES OPERATING MUNICIPAL FRANCHISES AND PUBLIC UTILITIES.

154. This part of the Act shall apply to all applications for incorporation of companies intended to operate or control any public or municipal franchise, undertaking or utility or which may require for its purposes the erection of any permanent structure in or upon any highway, stream or adjoining navigable waters, and to such companies when incorporated.

Application of this part of Act.

155. With the application for incorporation the applicants shall produce to the Provincial Secretary:

Material to be produced in application.

- (a) Evidence that the proposed capital is sufficient to carry out the objects for which the company is to be incorporated; that such capital has been subscribed or underwritten and that the applicants are likely to command public trust and confidence in the undertaking;
- (b) A detailed description of the plant, works and intended operations of the company, and an estimate of their cost;
- (c) A by-law of every municipality in which the operations of the company are to be carried on authorizing the execution thereof in the manner set out in the detailed description above referred to;
- (d) If the undertaking is to be carried on in an unorganized district, a report from the Minister of Lands, Forests and Mines approving of the undertaking.
- (e) If it is proposed that the company shall acquire any plant, works, land, undertaking, good will, contract or other property or assets, a detailed statement of the nature and value thereof.

156. The Provincial Secretary may refer the application and all statements, evidence and material filed thereon to engineers, architects, valuers or other experts for con-

Referring application to engineers, etc., for report.

sideration, investigation and report regarding the public necessity for the undertaking of the company, the amount of capital required therefor, the value of any plant, works, lands, undertaking, good will, contract or other property or assets to be acquired by the company and any other matter which may appear to be in the public interest regarding such undertaking.

Letters Patent
to be issued on
Order in Coun-
cil.

157. All Letters Patent and Supplementary Letters Patent of companies to which the provisions of this part of this Act are made applicable and of all companies heretofore incorporated for any purpose referred to in section 154, shall be issued on order of the Lieutenant-Governor in Council, and such Letters Patent or Supplementary Letters Patent may be issued in terms and conditions different from those applied for.

Notice of
application.

158. Notice of the application shall be published in such manner and shall be given to such persons or corporations as the Provincial Secretary may determine.

Existence of
company.

159. The term of existence of the company may be limited by the Letters Patent.

Limitations
in charter.

160. The Letters Patent may limit (1) the rate of dividend payable on the shares of the capital stock of the company and on debentures or other securities, and (2) the amount which the company may borrow on debentures, mortgages or other securities.

Proofs, etc., to
be produced on
application for
Supplementary
Letters Patent.

161. Upon any application for Supplementary Letters Patent extending the powers, increasing the capital or otherwise varying any term of the Letters Patent the company shall produce such evidence and statements as are referred to in section 155 hereof and such other evidence and statements as the Provincial Secretary may require, and he may refer the same in the manner and for the purposes set out in section 156.

Supplementary
Letters Patent,
what may be
contained in.

162. The Supplementary Letters Patent may fix the conditions upon which any shares, debentures, or other securities of the company, therein provided to be issued, may be allotted, sold or otherwise disposed of, and may vary any term, condition or proviso of the application therefor.

Rights of
municipality
preserved.

163. No provision contained herein or in the Letters Patent of the company regarding the issue of debentures or other securities or the making of mortgages to secure the same shall in any way prejudice the right which any municipality may have under the statute in that behalf to take possession of the plant and undertaking of the company.

164. The company may pass by-laws regarding the control and management of its undertaking; its dealings with the public it is incorporated to serve; the collection of tolls, charges, rates or levies for the public service given by the company; and for the use, protection and care of its property while being used, enjoyed or otherwise subject to public use, and may impose penalties for the infraction thereof; provided, however, that no such by-laws shall have any force or effect or be acted upon until approved by the Lieutenant-Governor in Council and published four times in a public newspaper published at the place where the undertaking of the company is carried on, or as near thereto as may be, and in the *Ontario Gazette*. Company may make by-law.

165. In addition to the other returns which may be required by this or any other Act, the company shall on or before the 8th day of February in each year make a report to the Provincial Secretary, under oath of the president and secretary which shall specify: Additional returns.

- (a) The cost of the work, plant and undertaking of the company; What the report is to contain.
- (b) The amount of its capital, and the amount paid thereon;
- (c) The amount received during the year from tolls, levies, rates and charges and all other sources, stating each separately;
- (d) The amount and rate of dividends paid;
- (e) The amount expended for repairs; and
- (f) A detailed description of any extension or improvement of the works or of any new works proposed to be undertaken in the current year, together with an estimate of the cost thereof.

166. The books of account of the company shall be at all times open to the inspection and examination of any shareholder. Every company to keep regular books of account.

167. The Provincial Secretary may appoint a person to inspect and examine such books and every person so appointed may take copies or extracts from the same, and may require and receive from the keeper of such books, and also from the president and each of the directors of the company, and all the other officers and servants thereof, all such information as to such books and the affairs of the company generally, as the person so appointed deems necessary for the full and satisfactory investigation into and report upon the state of the affairs of the company, so as to enable him to ascertain the correctness of statements furnished by the company. Inspection of books.

Existence of company may be extended by supplementary letters patent.

168. The Lieutenant-Governor in Council may, by Supplementary Letters Patent, extend the term of existence of any company incorporated for a limited period under this Act, for such further period as by Order-in-Council made previous to the expiry of such period he may direct, and the provisions of this Act having regard to the expiration of the term of existence of a company shall thereupon apply to such term as so extended.

PART XIII.

EXPROPRIATION.

Expropriation

169. A company incorporated for the purpose of operating any municipal or other public franchise, utility or undertaking and to which this part of this Act is made applicable by the Letters Patent may take, without the consent of the owner thereof, lands and easements therein which may be necessary for the purposes of its undertaking, in like manner as under the provisions of *The Ontario Railway Act* in that behalf lands may be expropriated for the purpose of a railway; Provided, however, that any such right of expropriation may be limited or any section or sections of the said *The Ontario Railway Act* may be excluded.

Application of Part XIII.

170. This part of the Act shall apply to any company heretofore incorporated under any general or special Act for the purposes referred to in section 154.

PART XIV.

WINDING UP COMPANIES.

Case of death of contributory.

171. If a contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representative, heirs and devisees shall be liable in due course of administration to contribute to the assets of the corporation in discharge of the liability of such deceased contributory, and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly.

Nature of liability of contributory.

172. The liability of any person to contribute to the assets of a corporation under this Act, in the event of the same being wound up, shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability.

Voluntary winding up.

173. A corporation may be wound up voluntarily under this Act:

1. Where the period, if any, fixed for the duration of the corporation by the Act, charter or instrument of incorporation has expired; or where the event (if any) has occurred, upon the occurrence of which it is provided by the Act or Letters Patent or instrument of incorporation that the corporation is to be dissolved and the corporation in general meeting has passed a resolution requiring the corporation to be wound up;
2. Where the corporation in general meeting called for that purpose has passed a resolution requiring the corporation to be wound up;
3. Where the corporation (though it may be solvent as respects creditors) has passed a resolution in general meeting to the effect that it has been proved to its satisfaction that the corporation cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same.

174. A winding up shall be deemed to commence at the time of the passing of the resolution authorizing the winding up. Commencement of winding up.

175. Whenever a corporation is wound up voluntarily, the corporation shall, from the date of the commencement of such winding up, cease to carry on its undertaking, except in so far as may be required for the beneficial winding up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the corporation, taking place after the commencement of such winding up, shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its constituting instrument or by-laws, continue until the affairs of the corporation are wound up. Corporation to cease business.

176. Notice of any resolution passed for winding up a corporation voluntarily shall be given by advertisement in the *Ontario Gazette* and filed in the office of the Provincial Secretary. Notice of resolution to be given.

177. After the commencement of the winding up, no suit, action or other proceeding shall be proceeded with or commenced against the corporation, and no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation. Provided, however, that after a winding up order has been made by the Court as hereinafter provided, such suit, action or other No suit or action against corporation after winding up.

proceeding, attachment, sequestration, distress or execution may be proceeded with by leave of the Court and subject to such terms as the Court may impose. And further provided that this section shall not apply to any proceeding taken under *The Winding-up Act* of the Parliament of the Dominion of Canada or other Act respecting Insolvency or Bankruptcy for the time being in force.

Consequences
of winding up.

178. The following consequences shall ensue upon the voluntary winding up of a corporation:

Privilege of
claims of clerks
and employees
allowed to a
certain extent.

- (1) The property of the corporation shall be applied in satisfaction of all its liabilities *pari passu*, and, subject thereto, shall, unless it be otherwise provided by the by-laws of the corporation, be distributed *pro rata* amongst the members or shareholders according to their rights and interests in the corporation;
- (2) In distributing the assets of the corporation, the salary or wages of all clerks and wage-earners in the employment of the corporation due at the date of the commencement of the winding-up or within one month before, not exceeding three months' salary or wages, shall be paid in priority to the claims of the ordinary general creditors, and such persons shall be entitled to rank as ordinary or general creditors for the residue of their claims.
- (3) Liquidators shall be appointed for the purpose of winding up the affairs of the corporation and distributing the property;
- (4) The corporation in general meeting shall appoint such person or persons as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him;
- (5) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him;
- (6) Upon the appointment of liquidators all the powers of the directors shall cease except in so far as the corporation in general meeting or the liquidators may sanction the continuance of such powers;
- (7) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two;

- (8) The liquidators shall settle the list of contributories of the corporation and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
- (9) The liquidators may at any time after the passing of the resolution for winding up the corporation and before they have ascertained the sufficiency of the assets of the corporation, call on all or any of the contributories, for the time being settled on the list of contributories, to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the corporation, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same;
- (10) The liquidators shall pay the debts of the corporation and adjust the rights of the contributories, shareholders or members amongst themselves.

179. All costs, charges and expenses properly incurred in the voluntary winding up of a corporation, including the remuneration of the liquidators, shall, after taxation by a taxing officer of the High Court who is hereby empowered to tax the same, be payable out of the assets of the corporation in priority to all other claims. Payment of costs and expenses.

180. The liquidators shall have power to do the following things: Power of liquidators.

- (1) To bring or defend any action, suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the corporation;
- (2) To carry on the business of the corporation so far as may be necessary for the beneficial winding up of the same;
- (3) To sell the real and personal property, effects and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or corporation, or to sell the same in parcels;

- (4) To do all acts and to execute, in the name and on behalf of the corporation, all deeds, receipts and other documents, and for that purpose to use, when necessary, the corporation's seal;
- (5) To draw, accept make and endorse any bill of exchange or promissory note in the name and on behalf of the corporation, also to raise upon the security of the assets of the corporation, from time to time, any requisite sum or sums of money; and the drawing, accepting, making or endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the corporation shall have the same effect with respect to the liability of such corporation as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of such corporation in the course of carrying on the business thereof;
- (6) To take out, if necessary, in his official name, letters of administration to the estate of any deceased contributory and to do in his official name any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate and which act cannot be conveniently done in the name of the corporation; and in all cases where he takes out letters of administration or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself;
- (7) To do and execute all such other things as may be necessary for winding up the affairs of the corporation and distributing its assets.

Inspectors.

181. A corporation about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by resolution, delegate to any committee of its members, contributories or creditors, hereinafter referred to as inspectors, the power of appointing liquidators and filling any vacancies in the office of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised; and any act done by the said inspectors in pursuance of such delegated power shall have the same effect as if it had been done by the corporation.

182.—(1) The liquidators shall deposit at interest in some chartered bank to be indicated by the inspectors all sums of money which he may have in his hands, belonging to the corporation, whenever such sums amount to \$100.

Deposit in bank by liquidators.

(2) Such deposit shall not be made in the name of the liquidator generally, on pain of dismissal; but a separate deposit account shall be kept for the corporation of the moneys belonging to the corporation, in the name of the liquidator as such, and of the inspectors (if any); and such moneys shall be withdrawn only on the joint cheque of the liquidator and one of the inspectors, if there be any.

Separate deposit account to be kept: withdrawal from account.

(3) At every meeting of the shareholders or members of the corporation the liquidators shall produce a pass-book, showing the amount of deposits made for the corporation, the dates at which the deposits were made, the amounts withdrawn and dates of such withdrawal; of which production mention shall be made in the minutes of the meeting, and the absence of such mention shall be *prima facie* evidence that the pass-book was not produced at the meetings.

Liquidators to produce bank pass book at meetings, etc.

(4) The liquidator shall also produce the pass-book whenever so ordered by the Court at the request of the inspectors or a member of the corporation, and on his refusal to do so, he shall be treated as being in contempt of Court.

Liquidator to produce bank pass book when ordered.

183. Where a corporation is being wound up voluntarily, the liquidators may from time to time, during the continuance of such winding up, summon general meetings of the corporation for the purpose of obtaining the sanction of the corporation by resolution, or for any other purposes they think fit; and in the event of the winding up continuing for more than one year, the liquidators shall summon a general meeting of the corporation at the end of the first year and of each succeeding year from the commencement of the winding up, and shall lay before such meeting an account shewing their acts and dealings, and the manner in which the winding up has been conducted during the preceding year.

Meetings of corporation during winding up.

184. If any vacancy occurs in the office of liquidators appointed by the corporation, by death, resignation or otherwise, the corporation in general meeting may, subject to any arrangement they may have entered into upon the appointment of inspectors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the corporation, and shall be deemed to have been duly held in manner prescribed

Vacancy in office of liquidator.

by the by-laws of the corporation, or in default thereof in the manner prescribed by this Act for calling general meetings of the shareholders or members of the corporation.

Liquidators may distribute assets after expiration of time fixed.

185. The provisions of section 38 of chapter 129 of The Revised Statutes of Ontario shall apply *mutatis mutandis* to liquidators.

Arrangements may be authorized with creditors.

186. The liquidators may, with the sanction of a resolution of the corporation or the inspectors, make such compromise or other arrangement as the liquidators deem expedient, with any creditors, or persons claiming to be creditors, or persons having or alleging to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the corporation where-by the corporation may be rendered liable.

Power to compromise with debtors and contributories.

187. The liquidators may, with the sanction of a resolution of the corporation or of the inspectors, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the corporation and any contributory or other debtor or person apprehending liability to the corporation and all questions in any way relating to or affecting the assets of the corporation, or the winding up of the corporation, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon; and the liquidators may take any security for the discharge of such debts or liabilities, and give a complete discharge in respect of all or any such calls, debts or liabilities.

Take security.

Power to accept shares, etc., as a consideration for sale of property to another company.

188.—(1) Where a corporation is proposed to be or is in the course of being wound up, and the whole or a portion of its business or property is proposed to be transferred or sold to another corporation, the liquidators of the first mentioned corporation, with the sanction of a resolution of the corporation by whom they were appointed conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, may receive, in compensation or in part compensation for such transfer or sale, shares or other like interest in such other corporation, for the purpose of distribution amongst the members of the corporation which is being wound up, or may, in lieu of receiving cash, shares, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing corporation.

(2) Any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the shareholders or members of the corporation which is being wound up, subject to the proviso that if any member of the corporation which is being wound up, who has not voted in favour of the resolution passed by the corporation of which he is a member, expresses his dissent from any such resolution, in writing, addressed to the liquidators or one of them, and left at the head office of the corporation, or the place where its undertaking is carried on, not later than seven days after the date of the meeting at which such resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer, that is to say, either (a) to abstain from carrying such resolution into effect, or (b) to purchase the interest held by such dissentient member, at a price to be determined in manner hereinafter mentioned, such purchase-money to be paid before the corporation is dissolved, and to be raised by the liquidators in such manner as may be determined by resolution.

Sale or arrangement by liquidators binding unless a member objects.

Proceedings on objection.

(3) No resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the corporation or for appointing liquidators.

Special resolution not invalid because prior to resolution to wind up.

(4) The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement; but if the parties dispute about the same such dispute shall be settled by arbitration under the provisions of *The Arbitration Act*.

Price payable to dissentient member.

189. The liquidator or liquidators or any creditor affected by the provisions of section 162 of this Act or the inspectors may at any time apply to the Master in Ordinary in the County of York or the Local Master in any other county or union of counties for his opinion, advice or direction in any matter arising in the liquidation, and the said master may give such opinion, advice or direction after hearing such parties as he shall direct to be notified or after such steps as he may prescribe have been taken, and such advice, opinion or direction shall be followed and shall be binding upon all parties in the liquidation subject to an appeal to a Judge of the High Court of Justice in Chambers if leave to appeal is given by such master and the order of such Judge of the High Court of Justice shall be final and binding in the liquidation.

Application to Master in Ordinary or Local Master for opinion.

190. A corporation may be wound up by Order of the Court:

Winding-up by Court.

1. Where it may be wound up voluntarily;

2. Where proceedings have been taken to wind up voluntarily and it appears to the Court that it is in the interests of contributories and creditors that it should be wound up under the supervision of the Court.
3. Where on the application of a contributory the Court is of the opinion that it is just and equitable that the corporation should be wound up.
4. When the Letters Patent or Supplementary Letters Patent have been declared forfeited or revoked or made void under the provisions of sections 22 or 148.

Who may
apply.

191. The winding-up order may be made on petition to a Judge or Local Judge of the High Court in Chambers by the liquidator or by any contributor, shareholder, member or when the corporation is being wound up voluntarily by a creditor having a claim of \$200 or upwards.

192. Where a winding-up order is made by the court without prior voluntary winding-up proceedings, the winding-up shall be deemed to commence at the time of service of notice of motion for the order.

Powers of
Court.

193. The Court may make the order applied for or may dismiss the petition with or without costs; may adjourn the hearing conditionally or unconditionally, or may make any interim or other orders as may be just, and upon the making of the order may, according to the practice and procedure of such court, refer the proceedings for the winding-up and may also delegate any powers of the Court conferred by this Act to a Master or Referee of the Court.

Appointment
of liquidator.

194. The Court in making the winding-up order may appoint a liquidator or liquidators of the estate and effects of the corporation; but no such liquidator shall be appointed unless a previous notice is given to the creditors, contributories, shareholders, or members in the manner and form prescribed by the Court. Provided, however, that if a liquidator has already been appointed in a voluntary liquidation such notice need not be given.

Appointment
by court.

195.—(1) If from any cause there is no liquidator acting either provisionally or otherwise, the Court may on the application of a member of the corporation, appoint a liquidator or liquidators.

Removal of
liquidator.

(2) The Court may also on due cause shewn, remove a liquidator and appoint another liquidator.

(3) When there is no liquidator the estate shall be under the control of the Court until the appointment of a new liquidator.

The case of no liquidator.

196. When a winding-up order has been made proceedings for the winding up of the corporation shall be taken in the same manner and with the like consequences as hereinbefore provided for a voluntary winding up. Provided, however, that the list of contributories shall be settled by the Court except where the same has been settled by the liquidator prior to the winding up order when such list shall be subject to review by the Court and that all proceedings in said winding up shall be subject to the order and discretion of the Court.

Proceeding in winding up after order.

197.—(1) The Court may direct meetings of the shareholders or members of the corporation to be summoned, held and conducted in such manner as the Court thinks fit for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

Meetings of members of company may be ordered.

Chairman.

(2) The Court may require any contributory for the time being settled on the list of contributories, or any trustee, receiver, banker, or agent or officer of the corporation to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to or into the hands of the liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the corporation is *prima facie* entitled.

Order for delivery by contributories and others of property, etc.

(3) The Court may make such order for the inspection by the creditors and contributories of the corporation of its books and papers as the Court thinks just; and any books and papers in the possession of the company may be inspected in conformity with the order of the Court, but not further or otherwise.

Inspection of books.

198. The Court may, at any time after the commencement of the winding up of the corporation, summon to appear before the Court or liquidator any officer of the corporation, or any other person known or suspected to have in his possession any of the estate or effects of the corporation, or supposed to be indebted to the corporation, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate or effects of the corporation, and in case of refusal to appear and answer the questions submitted, he may be committed and punished by the Judge as for a contempt.

Examination of persons before court or liquidator.

(2) Where in the course of winding up a corporation under this Act, it appears that any person who has taken

Power of court to assess damages

against delin-
quent direc-
tors, etc.

part in the formation or promotion of the corporation or any past or present director, manager, official or other liquidator, or any officer of the corporation has misapplied, or retained in his own hands, or become liable or accountable for, moneys of the corporation, or been guilty of any misfeasance or breach of trust in relation to the corporation, the Court may, on the application of a liquidator, or of any contributory of the corporation, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such promoter, director, manager, or other officer, and compel him to repay the moneys so misapplied or retained, or for which he has become liable or accountable, together with interest, such rate as the Court thinks just, or to contribute such sums of money to the assets of the corporation by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

Proceedings by
contributories,
at their own
expense and
for their own
benefit only.

199. If at any time a member of the corporation desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the corporation, and the liquidator, under the authority of the members of the corporation or of the inspectors, refuses or neglects to take such proceeding, after being duly required so to do, the member of the corporation shall have the right to obtain an order of the Court authorizing him to take such proceeding in the name of the liquidator or corporation, but at his own expense and risk, upon such terms and conditions as to indemnity to the liquidator, as the Court may prescribe; and thereupon any benefit derived from such proceeding shall belong exclusively to the member of the corporation instituting the same, for his benefit and that of any other member of the corporation who may have joined him in causing the institution of such proceeding; but if, before such order is granted, the liquidator signifies to the Court his readiness to institute such proceeding for the benefit of the corporation, an order shall be made prescribing the time within which he shall do so and in that case the advantage derived from such proceeding shall appertain to the corporation.

Powers of
court to be in
addition to
other powers.

200. Any powers by this Act conferred on the Court shall be deemed to be in addition to any other power, of instituting proceedings against any contributory, or against any debtor of the corporation for the recovery of any call or other sums due from such contributory, or against any debtor of the corporation, for the recovery of any call or other sum due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

201. The Court at any time after an order has been made for winding up a corporation may, upon the application by motion of any contributory, and upon proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as the Court deems fit.

Stay of proceedings.

202. Any party who is dissatisfied with any order or decision of the Court or of a Master or Referee in any proceeding under this Act, may appeal therefrom to a Judge of the High Court as in the case of a like order made in any action.

Appeals.

203. The Lieutenant-Governor in Council may from time to time make rules of practice and procedure for the due carrying out of the provisions of this part of the Act, and until such rules have been made the practice shall be the same as in cases of administration of estates so far as the same are applicable, or in the Master's Office in cases under the *Winding-Up Act*.

Rules of procedure.

204.—(1) As soon as the affairs of the corporation are fully wound up, the liquidators shall make up an account shewing the manner in which the winding up has been conducted, and the property of the corporation disposed of; and thereupon they shall call a general meeting of the members or shareholders of the corporation for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators; the meeting shall be called in the manner provided by the by-laws for calling general meetings of the shareholders or members of the corporation.

Account of winding up to be made by liquidator to a general meeting.

(2) The liquidator shall make a return to the Provincial Secretary of such meeting having been held, and of the date at which the same was held; which return shall be filed in the office of the Provincial Secretary; and on the expiration of three months from the date of the filing of such return, the corporation shall be deemed to be dissolved.

Return of holding of meeting to be sent to Provincial Secretary.

Dissolution of company.

205. Whenever the affairs of the corporation have been completely wound up; the Court may make an order that the corporation be dissolved from the date of such order, and the corporation shall be dissolved accordingly; which order shall be reported by the liquidator to the Provincial Secretary.

Order for dissolution.

Report to Provincial Secretary.

206. If the liquidator makes default in transmitting to the Provincial Secretary the return mentioned in section 187 (2) or in reporting the order (if any) declaring the cor-

Penalty on default in reporting by liquidator or in making return.

poration dissolved, he shall be liable on summary conviction to a penalty not exceeding \$20 for every day during which he is in default.

Disposition of
unclaimed
dividends.

207. All dividends deposited in a bank and remaining unclaimed at the time of the dissolution of the corporation, shall be left for three years in the bank where they are deposited, and if still unclaimed, shall then be paid over by such bank, with interest accrued thereon, to the Treasurer of Ontario, and, if afterwards duly claimed, shall be paid over by the Treasurer to the persons entitled thereto.

Deposit by
liquidator after
dissolution of
moneys with
sworn state-
ment.

208.—(1) Every liquidator shall, within thirty days after the date of the dissolution of the corporation, deposit in the bank appointed or named as hereinbefore provided for, any other moneys belonging to the estate then in his hands not required for any other purpose authorized by this Act, with a sworn statement and account of such money, and that the same is all he has in his hands; and he shall be liable on summary conviction to a penalty of not exceeding \$10 for every day on which he neglects or delays such payments; and he shall be a debtor to His Majesty for such money and may be compelled as such to account for any pay over the same.

Penalty on
omission.

Money to re-
main on de-
posit for three
years.

(2) The money so deposited shall be left for three years in the bank, and shall be then paid over, with interest, to the Treasurer of the Province, and if afterwards claimed shall be paid over to the person entitled thereto.

Disposal of
books, etc.,
after winding
up.

(3) Where a corporation has been wound up under this Act and is about to be dissolved, the books, accounts and documents of the corporation and of the liquidators may be disposed of in such a way as the corporation by resolution directs in case of voluntary winding up or the Court in case of winding up under order.

After five
years responsi-
bility as to
custody of
books, etc., to
cease.

(4) After the lapse of five years from the date of such dissolution no responsibility shall rest on the corporation or the liquidators, or any one to whom the custody of such books, accounts and documents has been committed, by reason that the same or any of them are not forthcoming to any party claiming to be interested therein.

PART XV.

APPLICATION OF ACT AND REPEAL.

Powers of
existing cor-
porations may
be varied.

209. The Lieutenant-Governor in Council may by Supplementary Letters Patent upon the application of a corporation, a shareholder, a creditor, a holder of bonds, debentures or other securities or obligation thereof to any person, firm or corporation with whom the company may have deal-

ings, relieve the corporation from any duty, obligation or other disability, or may limit any right, power or other advantage which may have been cast or conferred upon the corporation by the repeal of the general Act under which the said corporation was incorporated and by the enactment of this Act. Notice shall thereupon be given in the *Gazette* by the Provincial Secretary of such Supplementary Letters Patent setting out the manner in which any such duty, obligation or other disability has been relieved or in which such right, power or other advantage has been limited.

210. This Act, except in so far as it may have been particularly made otherwise applicable, shall apply to the following companies: Application of Act.

- (a) To every company incorporated under any special or general Act of the Parliament of the late Province of Upper Canada.
- (b) To every company incorporated under any special or general Act of the Parliament of the late Province of Canada which has its head office and carries on business within the Province of Ontario, and which was incorporated with objects or purposes to which the legislative authority of the Legislature of the Province of Ontario extends; and
- (c) To every company incorporated under any special or general Act of the Legislature of the Province of Ontario;

Provided, however, that this Act shall not apply to any such company incorporated for the construction and working of a railway, the business of insurance and the business of a loan corporation within the meaning of *The Loan Corporations Act*; and further provided that the Lieutenant-Governor in Council may relieve any company incorporated before the first day of July, 1907, from compliance with any of the provisions of this Act as may be deemed expedient. Proviso.

211. The Acts mentioned in Schedule E to this Act are hereby repealed to the extent specified in the third column of that schedule; provided, that Repeal.

- (1) Any Letters Patent, Supplementary Letters Patent, Order-in-Council, certificate, by-law, rule or regulation made or granted with respect to any company, corporation or association within the scope of this Act under any enactment hereby repealed, shall continue in force as if it had been made or granted under this Act; Proviso.
- (2) The corporate existence and powers of all companies, associations or other corporations within the scope of this Act incorporated otherwise than by Letters Patent under

any enactment hereby repealed shall continue as if such companies, associations or other corporations had been incorporated under this Act;

(3) The corporate existence, rights and powers of any and all corporations, associations and societies, registered as friendly societies, and incorporated under any Act respecting benevolent, provident and other societies, or any other Act of this Province, and all the rights and privileges of the members thereof and their beneficiaries are (subject to the provisions of *The Ontario Insurance Act* and all amendments thereto) hereby continued notwithstanding the repeal of any Act hereunder and notwithstanding anything in this Act hereinbefore contained.

(4) Saving and excepting those corporations referred to in subsection 3 hereof, any document referring to any Act or enactment hereby repealed shall be construed to refer to this Act or to the corresponding enactment of this Act.

(5) Any penalty may be recovered and any offence may be prosecuted under this Act for any matter or thing provided for under the Acts hereby repealed.

Commence-
ment of Act.

212. This Act shall, except as otherwise expressed, come into operation on the first day of July, one thousand nine hundred and seven.

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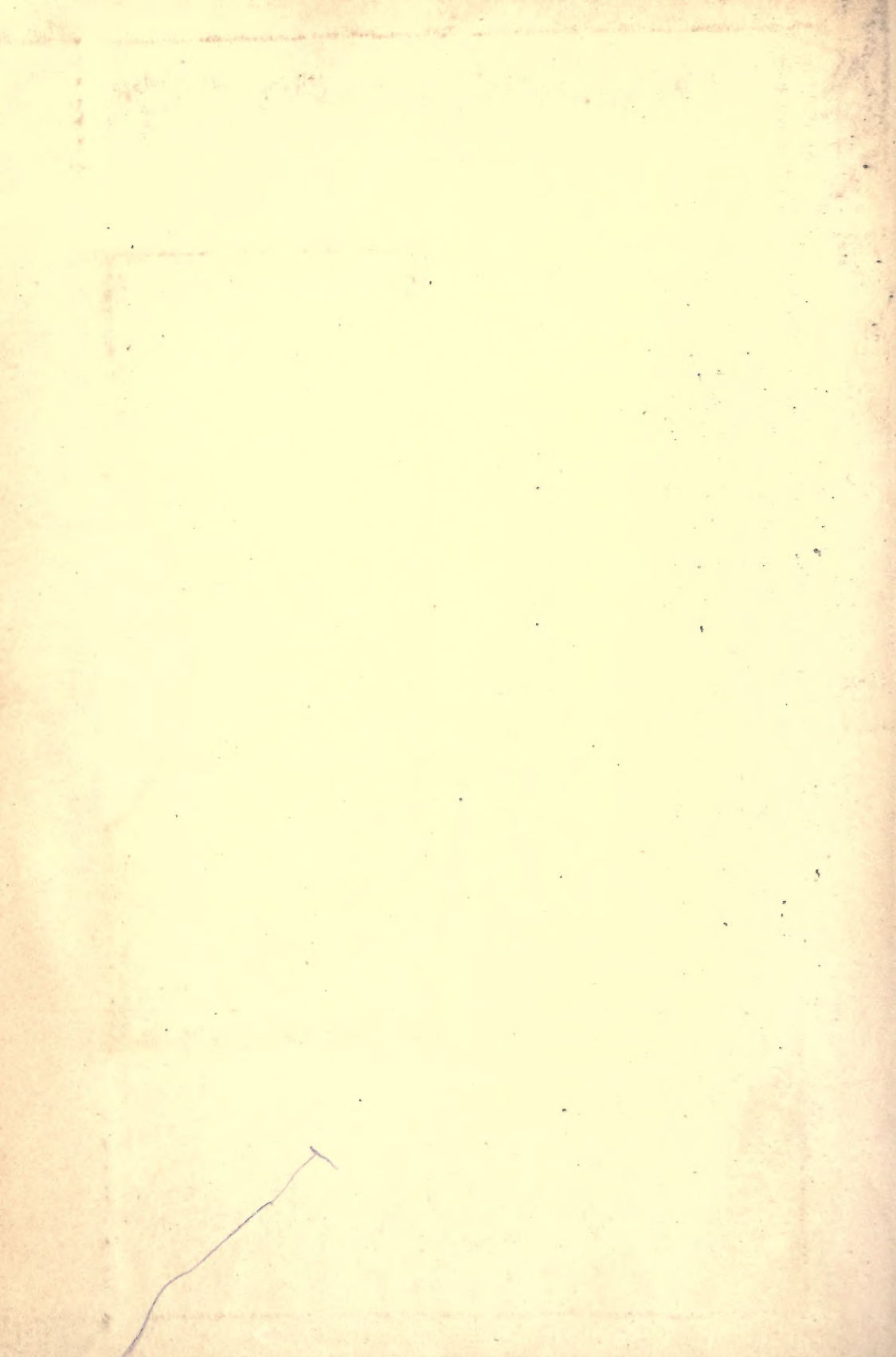
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